

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,) 14-CR-0548
)
)
)
)
BRIAN HARTLINE and)
BARRY BEKKEDAM,) Philadelphia, PA
) March 29, 2016
) 10:05 a.m.
Defendants.)

TRANSCRIPT OF OPENING STATEMENTS
BEFORE THE HONORABLE C. DARNELL JONES, II
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: DAVID J. IGNALL, ESQUIRE
 ASSISTANT UNITED STATES ATTORNEY
 UNITED STATES ATTORNEY'S OFFICE
 615 Chestnut Street, Suite 1250
 Philadelphia, PA 19106

For the Defendant PATRICK J. EGAN, ESQUIRE
Brian Hartline: FOX ROTHSCHILD LLP
 2000 Market Street, 10th Floor
 Philadelphia, PA 19107

For the Defendant MICHAEL J. ENGLE, ESQUIRE
Barry Bekkedam: GREENBLATT, PIERCE, ENGLE,
 FUNT & FLORES
 123 South Broad Street, Suite 2500
 Philadelphia, PA 19109

 RUSSELL D. DUNCAN, ESQUIRE
 SHULMAN, ROGERS, GANDAL,
 PORDY & ECKER, PA
 12505 Park Potomac Avenue
 Potomac, MD 20854

Audio Operator: CARL HAUGER

Transcribed by: DIANA DOMAN TRANSCRIBING, LLC
 P.O. Box 129
 Gibbsboro, NJ 08026
 Office: (856) 435-7172
 Fax: (856) 435-7124
 Email: dianadoman@comcast.net

Proceedings recorded by electronic sound recording; transcript
produced by transcription service.

I N D E XOPENING STATEMENTS:PAGE

FOR THE GOVERNMENT

Mr. Ignall

3

FOR THE DEFENDANTS

Mr. Egan

26

Mr. Duncan

49

Ignall - Opening Statement

3

1 (The following requested portion, opening statements
2 of counsel, was heard in open court at 10:05 a.m.)

3 MR. IGNALL: Good morning, ladies and gentlemen.

4 THE JURY: Good morning.

5 MR. IGNALL: As the Judge just indicated to you,
6 this case involves fraud. It involves fraud against the
7 Government, it involves fraud against investors, and fraud
8 against a bank. The bank in this case is called Nova Bank.

9 Fraud simply means lying or hiding the truth in
10 order to get money, and that's what these two defendants,
11 Brian Hartline and Barry Bekkedam did. They engaged in fraud
12 against the United States Government; they engaged in fraud
13 against a bank, Nova Bank, and Mr. Bekkedam engaged in fraud
14 against investors.

15 This all had to do with a bank called Nova Bank, a
16 bank that by 2008 was struggling and ultimately failed. This
17 has to do with both of these defendants trying to prop up that
18 bank to make it look like it was stronger than it was so that
19 they could get money from the United States Government and, in
20 the case of Mr. Bekkedam, get money from investors.

21 Let's go back to the beginning here. You're going
22 to learn that in about 2002, these two defendants and others
23 took over another bank and started what they called Nova Bank.
24 You're going to hear that Mr. Hartline used to be a CPA, and
25 he's the one who ran the bank. Originally, Mr. Bekkedam was

Ignall - Opening Statement

4

1 the chairman of both the bank and what we call the bank
2 holding company, the company that owned the bank.

3 You're going to hear that Mr. Bekkedam was also a
4 sophisticated financial person. He had a degree in
5 accounting, and he owned an entity called Ballamor Capital.
6 That was an investment advisory firm that Mr. Bekkedam owned
7 where he had clients and he advised them on what to invest in.
8 You're going to hear that even though starting in 2007 Mr.
9 Bekkedam was no longer the chairman of the bank or the holding
10 company, he still wielded significant influence over this
11 bank. He did so because Ballamor Capital clients owned more
12 than half of the bank.

13 You're going to learn that what these two defendants
14 did was that they tried to make the bank seem stronger, and
15 the way they did that is they engineered and orchestrated
16 loans where the bank loaned money to individuals to supposedly
17 invest in the bank, when in fact what happened was the bank's
18 money got sent right back to the bank to make it look like
19 there was \$8 million of outside investor funds in the bank
20 that would help keep the bank strong in case it was losing
21 money. But in fact that money came straight from the bank
22 itself.

23 That's the fraud. The fraud is concealing from bank
24 regulators, concealing from investors, and in some cases
25 you'll see concealing from individuals at the bank what the

Ignall - Opening Statement

5

1 purpose of these loans was, indeed just the existence of these
2 loans, when Mr. Bekkedam had people working for him,
3 representing to investors that the bank was strong, and
4 failing to inform bank regulators who were considering whether
5 to provide funding to the bank, whether to provide \$13 million
6 to the bank, concealing from those people that \$8 million of
7 supposedly new money into the bank actually came from the bank
8 itself.

9 Now, you're going to learn that fortunately, at
10 least with respect to the Treasury, these defendants didn't
11 get the \$13 million. But it wasn't for lack of trying. It
12 turned out there were other reasons that the Treasury didn't
13 want to give Nova Bank the money. But these defendants still
14 engaged in a scheme to defraud. They engaged in a scheme to
15 lie to regulators, to lie to the bank, and Mr. Bekkedam
16 engaged in a scheme to lie to investors.

17 This all goes back to the financial crisis of 2008.
18 The United States Treasury created something called the
19 Troubled Asset Relief Program or TARP. And you're going to
20 hear a lot of acronyms and abbreviations, and one of the other
21 ones you might hear is the Capital Purchase Program or CPP.
22 You don't need to remember all the specific letters.

23 But what this program was, was a way during the
24 financial crisis for the federal government to invest in
25 certain banks, not to keep them afloat if they're going to go

Ignall - Opening Statement

6

1 under, but to allow them to keep operating and to keep lending
2 money in the community to individuals and banks -- individuals
3 and businesses during the financial crisis so that those banks
4 could keep doing what they're designed to do. But you're
5 going to learn that this wasn't a gift. This wasn't a
6 donation from the federal government using public money. This
7 was an investment, that the bank had to pay it back and to pay
8 it back with dividends.

9 So, therefore, the Department of the Treasury, using
10 bank regulators -- and look up there you see the FDIC and the
11 Federal Reserve. Those are two bank regulating entities from
12 the Government that regulated Nova Bank and the business --
13 the holding company that owned the bank.

14 You're going to learn that the way this TARP program
15 worked was that it required that the bank provide truthful and
16 accurate information to the FDIC and the Federal Reserve, so
17 that those Government entities could provide information to
18 people at the Department of the Treasury to decide whether
19 Nova Bank was a good enough bank, whether it was viable,
20 whether it was likely to survive even without Government
21 funding. The idea is not to send public money into a bank
22 that's going to fail anyway, but to put public money into a
23 bank that's going to succeed, to give it the opportunity to
24 continue to operate and to continue to lend money. But this
25 program required honest information.

Ignall - Opening Statement

7

1 Well, Mr. Bekkedam and Mr. Hartline had a
2 significant incentive to get funding from the TARP program.
3 The bank was struggling. The bank did not have as much
4 capital, as much money in the bank that it could use to offset
5 losses as it needed to keep on going, at least as it -- to
6 keep on going without restrictions from the Federal government
7 in terms of what it could go because of its financial state.
8 And these defendants thought that by getting the TARP funding
9 and getting funding from other individuals, they could keep
10 this bank afloat.

11 This bank was Mr. Hartline's job. He was the CEO.
12 He ran the bank. His wife worked at the bank. But this bank
13 was also very important to Mr. Bekkedam. You're going to
14 learn, as I mentioned before, that his clients owned a
15 majority of the bank. You're also going to learn that his
16 clients borrowed money from the bank that they could use to
17 invest with Mr. Bekkedam. You're going to know that Mr.
18 Bekkedam still wielded significant influence over the bank to
19 the extent that he told individuals even after he was no
20 longer the chairman that Nova Bank was his bank.

21 Well, how did this work? In June of 2009, Nova --
22 I'm sorry, in October of 2008, Nova Bank applied to the
23 Troubled Asset Relief Program for funding. This went through
24 a committee, it went through a number of people within the
25 Treasury and within the banking regulating community, to

Ignall - Opening Statement

8

1 determine whether Nova was healthy enough. Initially, the
2 Treasury people didn't think Nova was healthy enough, but
3 eventually a council, a group of four different regulators
4 agreed to recommend that Nova get funding, more than \$13
5 million. But there was a contingency; there was something
6 that Nova Bank had to do. They had to raise \$15 million of
7 outside money in order to make the bank strong enough that it
8 wasn't going to fail, whether or not it got money from the
9 Treasury.

10 Well, that's where the scheme comes in. These
11 defendants tried to raise money. It's June 10th of 2009 when
12 they learned from the FDIC that the Treasury had conditionally
13 approved them, but they have to raise \$15 million. And the
14 Treasury came up with that \$15 million number because Mr.
15 Hartline, on behalf of the bank, had told the Treasury that
16 there was an investor, a man named George Levin, who was going
17 to put up \$15 million.

18 Well, come the end of June, after Mr. Hartline and
19 Mr. Bekkedam know that they need to come up with \$15 million,
20 they try to get something, they try to raise money. They try
21 to get money from Mr. Levin, but Mr. Levin doesn't want to put
22 up his own money. Mr. Levin has already invested in something
23 called Banyon, an investment he thinks is very lucrative.
24 That's a business deal that he has involvement with Mr.
25 Bekkedam in, that a lot of Mr. Bekkedam's clients are invested

Ignall - Opening Statement

9

1 in Banyon as well.

2 So Mr. Levin wants -- Mr. Bekkedam plans to invest
3 in Banyon, and Mr. Bekkedam wants Mr. Levin to invest in the
4 bank. But Mr. Levin doesn't want to put up his own money. So
5 come the end of June, the first part of the scheme goes into
6 place. That's where these two defendants arranged for Nova
7 Bank to loan Mr. Levin \$5 million that he would send right
8 back to the bank. And you're going to see emails and other
9 documents showing both of these defendants talking about
10 loaning money to Mr. Levin for one purpose and one purpose
11 only, to send it back to the bank. And that's in fact
12 exactly what happened.

13 On June 30th, at the end of a quarter, a time period
14 when the bank is going to report its capital, how much money
15 it has, to federal regulators, on June 30th itself, these two
16 defendants arranged for Mr. Levin to borrow \$5 million and
17 send it right back to the bank. And you're going to see that
18 the money went from the bank to Mr. Levin, two hours later
19 it's back at the bank. The purpose of this loan was to make
20 it look like the bank had more money than it did.

21 You're going to learn that these defendants did that
22 twice more involving a person named Anthony Bonomo and Charles
23 Gallub, two more people that Mr. Bekkedam introduced to the
24 bank, who borrowed money for one purpose, to send it right
25 back to the bank so the bank could make it look like they had

Ignall - Opening Statement

10

1 gotten at this point a total of \$8 million, when in fact that
2 \$8 million came from the bank itself. That way, come December
3 of 2015, Mr. Hartline could represent to the FDIC that the
4 bank had met the contingency.

5 But the fraud here is that Mr. Hartline concealed
6 the truth. He hid from the regulators that \$8 million of that
7 15 million was the bank's own money. Mr. Hartline did that
8 because he knew that if the regulators found out that the
9 money came from the bank itself, that didn't make the bank any
10 stronger. That's something they would want to know, and
11 that's what makes this fraud.

12 What makes this a fraud is concealing the truth from
13 regulators. What makes this a fraud is Mr. Bekkedam
14 concealing the truth from investors that he and people who
15 were working for him were soliciting to invest in the bank by
16 making it seem that it was stronger than it was.

17 And you're going to learn from people at the
18 Treasury, people who were on this CPP council working for the
19 Treasury, that when they said \$15 million, they meant \$15
20 million. They didn't mean send out a loan and get an IOU and
21 hope that someone will pay \$8 million later. They wanted \$15
22 million of actual money in the bank so the bank would be
23 stronger, the bank could loan more money, but more importantly
24 the bank could absorb losses. If people didn't pay money back
25 on their loans, the bank had a cushion. An IOU doesn't

Ignall - Opening Statement

11

1 provide a cushion.

2 Let's talk about Mr. Levin's loan. Not only was
3 this for one purpose, to send it back to the bank, but it
4 wasn't a normal loan for Nova Bank itself. This was the
5 biggest loan in the bank. This was right at the bank's
6 lending limit. This was a loan that the bank turned around in
7 one day; it's a loan that had no security, no collateral, just
8 Mr. Levin's promise to pay it back because he seemingly was
9 very wealthy, and we'll get to that in a minute as to how
10 wealthy he turned out to actually be.

11 This was a loan that only certain members, people at
12 the bank knew what it was for. Mr. Hartline knew what it was
13 for. The chief loan officer, who you'll find out was later
14 convicted of a different fraud while working at the bank, knew
15 what it was for. But if you were to look at the bank
16 paperwork, nothing in Mr. Levin's loan file would show that
17 this \$5 million was meant to be sent back to Nova Financial
18 Holdings to buy Nova Financial Holdings stock. A bank
19 regulator could look high and low and would never see that.
20 The bank documents say that it was either for investment, or
21 another bank document said it was for business purposes.

22 You're going to find out that members of the loan
23 committee, who had to approve this loan, did not know what the
24 purpose of Mr. Levin's loan was. You're going to learn that
25 the underwriter at the bank, the person who puts together the

Ignall - Opening Statement

12

1 package to decide whether loans should be made or not, wanted
2 additional information about Mr. Levin's finances and the
3 businesses that he was invested in to make sure he was
4 creditworthy. But you're going to find out that Nova Bank
5 closed on this loan, even though the underwriter didn't get
6 all the documentation he was looking for. Why is that?
7 That's because these defendants wanted to conceal the purpose
8 of the loan from the bank and then ultimately from bank
9 regulators, to make sure they wouldn't know that the bank's
10 own money was being used here to prop up the bank.

11 Mr. Levin also had to be screened by the state and
12 federal government to potentially own a certain amount of the
13 bank. Well, you're going to hear that the concealment
14 continued to the Pennsylvania Department of Banking and the
15 Federal Reserve when it came to Mr. Levin's application, that
16 one of the questions that the bank regulators asked was,
17 where's your money coming from to invest in the bank? We have
18 to make sure that you have the financial ability to make this
19 investment.

20 Well, there's a lot of communication between the
21 bank and Mr. Levin and somebody who works for him,
22 communication with Mr. Bekkedam about answering those
23 questions, but at no point does anyone at the bank tell -- or
24 ask Mr. Levin to tell a bank regulator that in fact Mr. Levin
25 had borrowed \$5 million to make his first supposed purchase of

Ignall - Opening Statement

13

1 the bank stock.

2 Well, after Mr. Levin engaged in his first
3 transaction -- which you're going to hear he did as a favor to
4 Mr. Bekkedam because they had a lot of business dealings going
5 on. This was not something he was very eager to do; it wasn't
6 something he was looking to borrow money and then maybe at
7 some other point invest in Nova Bank. He did this whole
8 transaction as a favor to Mr. Bekkedam because of their
9 ongoing business relationship.

10 Mr. Bekkedam wanted Mr. Levin to invest money or
11 maybe even borrow money to invest in Nova Bank, but Mr. Levin
12 was not very enthusiastic about that. You're going to hear
13 that in July, Mr. Hartline tried to get a loan from another
14 bank to Mr. Levin so he could invest in Nova Bank.

15 Now, that's a little bit different, ladies and
16 gentlemen, you're going to hear, than Nova Bank loaning the
17 money itself, because if Nova Bank makes the loan, all they
18 get in return is an IOU. So if Mr. Levin pays it back, then
19 they have money. If Mr. Levin doesn't pay it back, they don't
20 have any more money. If another bank, in this case it's a
21 bank called ACBB, were to make a loan, then the bank, Nova
22 Bank has the money. If Mr. Levin can't pay it back, that's on
23 ACBB.

24 Well, ACBB in this case decided that they weren't
25 willing to give Mr. Levin a loan, that they didn't think he

Ignall - Opening Statement

14

1 was creditworthy enough to get a loan for up to \$9 million.
2 So Mr. Levin was not enthusiastic about putting in any more
3 money. So that's when these two defendants needed to try to
4 raise money from another source, and that's where you're going
5 to hear that Mr. Bekkedam was working to raise money from
6 investors, raise money from people who were clients of
7 Ballamor Capital, but also raise money from other people that
8 he knew.

9 You're also going to hear about how urgent things
10 became in October of 2009 when these defendants thought there
11 was a deadline, and you're going to hear that the Treasury
12 kept extending the deadline for Nova to meet this contingency.
13 They moved it to October, ultimately moved it to December.

14 But you're going to see email exchanges involving
15 Mr. Hartline and Mr. Bekkedam in October of 2009 where Mr.
16 Bekkedam is eager to try and get money from Mr. Levin, where
17 he says if Mr. Levin will come up with \$5 million more, the
18 bank will send it back to him. He just needs to be able to
19 show some money from Mr. Levin to get this TARP funding. And
20 you're going to see the role that each of these defendants
21 plays.

22 You're going to see emails where Mr. Bekkedam says
23 that Brian has the regulators killing him, meaning Brian
24 Hartline. You're going to see Mr. Bekkedam sending an email
25 to somebody who worked for Mr. Levin saying you have to help

Ignall - Opening Statement

15

1 me so that I can manage Brian, who's managing the regulators;
2 how important it was to make it look like the bank had more
3 money than it did so they could get this TARP funding.

4 So in October, Mr. Bekkedam and Mr. Hartline come up
5 with another person, Anthony Bonomo. Mr. Bonomo is a client
6 of Ballamor, a client of Mr. Bekkedam, someone who was
7 introduced to the bank by Mr. Bekkedam. Just like with Mr.
8 Levin, these defendants orchestrate a loan to Mr. Bonomo. In
9 this case it's a loan for \$4.5 million.

10 This loan actually has two purposes; one is to put
11 money into this Banyon investment, the investment that Mr.
12 Levin and Mr. Bekkedam have -- that they worked on together,
13 and \$2 million is going to go into Banyon, \$2.5 million is
14 going to go right back to Nova Bank to make it look like Mr.
15 Bonomo has invested \$2.5 million, when in fact this is money
16 that started with the bank. Just like with Mr. Levin, you
17 could look high and how in the bank paperwork, you will never
18 see anything that shows the true purpose of this loan. The
19 purpose of the loan in the bank paperwork shows that he's
20 going to invest -- not just an investment, but specifically an
21 investment in Banyon. Not one word about Nova Financial
22 Holdings.

23 So, ladies and gentlemen, the question then is, why?
24 Why is the bank paperwork silent on this? The reason, you're
25 going to learn, is because that way bank regulators would have

Ignall - Opening Statement

16

1 a much more difficult time figuring out what the purpose of
2 that loan was, to realize that Mr. Bonomo's \$2.5 million is
3 not something that should count as new money in the bank, as
4 money that qualified for that \$15 million contingency to get
5 funding from the federal government.

6 Well, a few days later, the end of October, there's
7 another problem. This Banyon investment, that Mr. Levin, as
8 you'll find out, was basically more than 100 percent invested
9 in, not only did he have his own money in it, but he was
10 guaranteeing the returns for other people. You're going to
11 find out that around Halloween of 2009, Mr. Levin, as well as
12 these defendants, learned that the Banyon investment was
13 basically worthless. So Mr. Levin's financial situation, he's
14 not worth \$400 million, he's worth a whole lot less.

15 So at this point Mr. Levin is not going to invest
16 any of his own money because he really doesn't have much money
17 to invest, and at this point he's really not very likely to
18 pay off that \$5 million interest-only unsecured loan. He's
19 been paying the interest up to this point, but now his
20 financial circumstances are such that he's very unlikely to
21 pay that back.

22 But the TARP deadline has continued to be extended
23 and now it's in December. That's when these defendants
24 orchestrate the third loan. This is a loan to a man named
25 Charles Gallub. Mr. Gallub is someone else who was introduced

Ignall - Opening Statement

17

1 to the bank through Mr. Bekkedam. He's a real estate
2 developer. He's someone who has a lot of loans, business
3 loans with the bank.

4 Well, Mr. Hartline approaches him to get him to
5 invest in the bank, as Mr. Hartline had done a year earlier in
6 2008, when Mr. Gallub had also supposedly invested in the
7 bank. But in both times, Mr. Gallub simply borrowed money
8 from Nova Bank to send it back to Nova Bank. And you're going
9 to hear that Mr. Gallub did that because he simply wanted to
10 keep up his relationship with the bank. He had a lot of loans
11 with the bank; he wanted to keep the bank happy. And again,
12 just like with Mr. Levin, just like with Mr. Bonomo, you could
13 search high and low in the bank records and you won't see any
14 evidence that Mr. Gallub's loan was meant to be sent right
15 back to Nova Bank.

16 You're going to see with the December 2009 loan to
17 Mr. Gallub for \$500,000, that the purpose of that loan was
18 working capital. What does that mean? That means money for
19 Mr. Gallub's real estate business. It doesn't say one word
20 about circling it back round.

21 Well, right around this time, now the defendants
22 have orchestrated \$8 million of loans to people to send right
23 back to the bank so they can represent \$8 million in new money
24 to meet this contingency. Around this same time, you're going
25 to hear that Nova Bank paid Mr. Bekkedam \$250,000 for his

Ignall - Opening Statement

18

1 efforts in fund raising on behalf of the bank.

2 You're going to hear that right around that time, on
3 December 15th, Mr. Hartline wrote to the FDIC, and that's
4 where the information -- that's when he gave the information
5 to and have it go up to the Treasury that Nova had met the
6 contingency, that they had raised all \$15 million. But what
7 does he conceal? He conceals that \$8 million of that is money
8 that came from the bank itself. He conceals from the bank
9 that the \$5 million loan to Mr. Levin, which maybe seemed like
10 it was a good idea back in June, maybe didn't, well, now Mr.
11 Levin is not really in a position to pay that back.
12 Nonetheless, he represents to the Treasury that they've raised
13 all \$15 million, concealing the truth from the Treasury.

14 Well, it turns out that because of other problems at
15 Nova Bank, the Treasury denied the application. Not because
16 they found out about this fraud, but because even if Nova had
17 really raised \$15 million from the outside, people at the
18 Treasury were concerned that Nova was not strong enough to
19 survive. And as you'll find out, ultimately in 2012, Nova did
20 not survive.

21 But that, ladies and gentlemen, is the crux of the
22 fraud, and you're going to learn that a loan, even to someone
23 who appears to be rich, is not the same thing as money in the
24 bank. You're going to hear from the bank regulators why it's
25 important for them to know if the bank is loaning its own

Ignall - Opening Statement

19

1 money to fund its own investment rates.

2 But, in particular, you're going to find out that
3 Mr. Levin never paid the \$5 million back. You're going to
4 find out that Mr. Bonomo went into a lawsuit to try not to pay
5 back the loan that he took out to circle back to Nova. You're
6 going to find out that in 2010, Mr. Gallub did pay back both
7 of his loans, but he did so at the urging and pressure of Mr.
8 Hartline. And he paid both loans back, even though he had a
9 lot of other loans with the bank that he could have paid back
10 instead. That's why a loan is not the same as money in the
11 bank.

12 Well, even though in December of 2009 the United
13 States Treasury determined that Nova was not going to get the
14 funding despite this fraud, the concealment by these two
15 defendants didn't end. You're going to hear from a gentleman
16 named Todd Howard. He's someone who worked for Mr. Bekkedam.
17 You're also going to hear that he used to be in the United
18 States Army, and as he told Mr. Bekkedam when he was applying
19 for a job there, that he had been discharged from the Army
20 because he had claimed more pay for his wife than he was
21 entitled to.

22 You're going to hear that Mr. Howard worked for Mr.
23 Bekkedam and was trying to sell people on the idea of buying
24 Nova Bank shares, selling people on the idea that Nova Bank
25 and indeed the Nova Bank Holding Company were good

Ignall - Opening Statement

20

1 investments. Well, Mr. Howard discovered something in
2 December that troubles him a lot. He discovers that George
3 Levin has borrowed \$5 million and then supposedly invested in
4 the bank. You're going to hear that to Mr. Howard that made
5 him very concerned about a) him investing his own money in
6 Nova Bank, and b) him representing to clients that Nova Bank
7 was a good investment, because he didn't know that Mr. Levin
8 didn't put money in, but in fact the bank put its own money
9 in.

10 So that's when Mr. Howard contacts Mr. Bekkedam, and
11 you're going to see the email where he says we need to have a
12 heart to heart; I'm very troubled. You'll learn that they had
13 a conversation and that Mr. Bekkedam tried to placate Mr.
14 Howard, but never gave him any answers.

15 You're going to hear that Mr. Howard was still
16 concerned, so concerned that he went to Mr. Hartline at the
17 bank and said, I need to understand what happened here. You
18 need to make me feel better that this was nothing illegal.
19 About a month goes by; he doesn't hear from Mr. Hartline, so
20 he sends Mr. Hartline another email. In this email, Mr.
21 Howard is more direct and says, if I don't get some answers
22 from you, I'm going to go to financial regulators. I need
23 some opinion that nothing was wrong here.

24 Well, that gets Mr. Hartline's attention. You're
25 going to hear that shortly thereafter, Mr. Hartline contacted

Ignall - Opening Statement

21

1 the bank's attorney to try and get an opinion from the bank's
2 attorney that he could use to get back to Mr. Howard to stop
3 Mr. Howard from going to financial regulators.

4 Now, although -- and you're going to hear from the
5 bank's attorney. And although the bank's attorney did not
6 work on what to disclose or not to disclose to the Treasury in
7 terms of the TARP application, and in fact in his opinion
8 letter wasn't asked to describe what the bank should have told
9 or not told bank regulators when applying for the TARP, his
10 letter was only about whether the loan violated Pennsylvania
11 law. And as we discussed before, the loan itself is not the
12 fraud, it's concealing the loan, concealing the source of the
13 funds that Mr. Levin used to invest supposedly in the bank
14 that's the fraud.

15 Well, you're going to hear from the bank's lawyer
16 that he got a number of documents and got information from Mr.
17 Hartline. And you're going to hear that when communicating
18 with the bank's lawyer, Mr. Hartline concealed the true
19 purpose of Mr. Levin's loan.

20 You're going to hear that Mr. Hartline told the
21 bank's lawyer that this loan was not to invest in Nova Bank,
22 but this loan was just a coincidence, that Mr. Levin wanted
23 some money to pay back funds he had used to fix up a house in
24 Devon, and just by coincidence the same day he happened to
25 decide that's the day I want to buy some Nova Financial

1 Holdings stock.

2 You're going to see a document that Mr. Hartline
3 sent to the bank's lawyer. It's called a risk assessment
4 summary, and that's a document the bank uses to decide whether
5 someone should get a loan or not. It has a lot of information
6 on it. One of the pieces of information on this risk
7 assessment summary is the purpose of the loan.

8 Ladies and gentlemen, you're going to see two
9 different risk assessment summaries for Mr. Levin. The first
10 one, the one I talked about earlier, that's in the bank
11 records that was made at the time of Mr. Levin's loan that
12 shows that it's for investment purposes. It doesn't say Nova,
13 but it says investment purposes.

14 Well, in early 2010, when Mr. Hartline is getting
15 this opinion letter from the bank's lawyer, he sends a second
16 risk assessment summary. This one is consistent with the
17 concealment. This one says the purpose of the loan is to
18 replace funds that Mr. Levin had spent fixing up his house in
19 Devon.

20 Well, the letter, the opinion, the information that
21 Mr. Hartline gave to the bank's lawyer is not the end of the
22 concealment here. You're going to find out that in 2010,
23 there's a firm called KPMG, they're an accounting firm, and
24 they come in to audit the bank's financial records. And
25 you're going to learn, not through Mr. Hartline, but through

Ignall - Opening Statement

23

1 someone who is an internal auditor at the bank, the accounting
2 firm found out about Mr. Levin's loan and then supposed
3 purchase of bank stock.

4 When the auditor found out about that, the auditors
5 went in, in May of 2010, and met with Mr. Hartline and other
6 members of the bank and said, you can't count that as money in
7 the bank. You can count that as money in the bank when and if
8 Mr. Levin pays the loan back. But as long as it's a loan and
9 just a hope, an IOU, you can't count that as capital. You
10 can't count that as shareholders' equity.

11 Mr. Hartline doesn't like that answer, so he sends a
12 letter to the auditor. And at this meeting the auditor said,
13 I want information, not just about Mr. Levin, but about any
14 other supposed investor who also had a loan from the bank at
15 around the same time. So that's how the auditor finds out
16 about Mr. Gallub and finds out about Mr. Bonomo.

17 Well, Mr. Hartline, as I said, didn't like that
18 answer, so Mr. Hartline sent a letter, and you're going to get
19 to see this letter, to the auditor where Mr. Hartline
20 continues the same concealment, that these loans were somehow
21 totally independent and just a big coincidence that it's the
22 same day; that Mr. Levin just wanted money to pay back what he
23 had spent to fix up a house in Devon. Mr. Levin was looking
24 to borrow money from the bank months earlier and that Mr.
25 Levin really wanted to invest in Nova Bank and they weren't

Ignall - Opening Statement

24

1 connected.

2 You're going to be able to compare what Mr. Hartline
3 said in this letter with the emails and the documents you're
4 going to see from the time of these loans that make it clear
5 the loans had one purpose, to send the money right back to
6 Nova Bank. You're also going to see and hear sworn testimony
7 from Mr. Hartline after the fact, where again he continues to
8 say that the loan to Mr. Levin was not connected to sending
9 the money right back to Nova Bank. And you're going to see
10 that he even acknowledges that that would be a problem if the
11 bank were to loan money to someone to send it right back, that
12 there's an accounting rule, you can't do that.

13 Ladies and gentlemen, at the end of this trial, you
14 will have seen and heard a lot of evidence. You're going to
15 see documents that underlie the transactions. You're going to
16 see email communications that involve Mr. Hartline and Mr.
17 Bekkedam. You're going to listen to witnesses who have
18 knowledge. You're going to listen to Mr. Levin, Mr. Bonomo,
19 and Mr. Gallub, and listen to people who were Ballamor
20 clients. You're going to look at what these two defendants
21 did and ask yourselves why, why engage in these transactions,
22 and why conceal these transactions from regulators and from
23 investors.

24 Ladies and gentlemen, this isn't, and you can be
25 happy to know, about accounting or bank regulations or

1 something that would make everyone's eyes glaze over. This is
2 about fraud. This is about whether these two defendants knew
3 what they were doing was wrong, knew what they were doing was
4 something that bank regulators would want to find out about
5 and made an effort to conceal that; whether Mr. Bekkedam knew
6 that investors would want to know that the bank's own money
7 was being used to make it seem healthier and whether he tried
8 to conceal that as well.

9 Ladies and gentlemen, it's like taking water from
10 one glass into another and making it seem like there's twice
11 as much water simply because someone has promised to fill that
12 first glass. The question is, why did these two defendants do
13 this? Were they trying to conceal the truth from regulators,
14 from the bank, and with respect to Mr. Bekkedam, from
15 investors?

16 When you consider all the evidence in this case,
17 when you listen to the witnesses, you see the documents, you
18 see the emails, when you listen to the Court's instructions on
19 the law, you're going to come to one conclusion, that both of
20 these defendants are guilty on each of the counts in which
21 they are charged. Thank you.

22 (Pause)

23 THE COURT: You can stand up and stretch your legs,
24 if you wish.

25 (Transcriber change)

Egan - Opening Statement

26

1 THE COURT: All right. Mr. Egan, do you wish to
2 give an opening statement at this time for Mr. Hartline?

3 MR. EGAN: Yes, Your Honor. Thank you very much.

4 THE COURT: You may proceed.

5 MR. EGAN: And if Your Honor doesn't mind, I -- I
6 might move this a tiny bit closer. Thank you. I'm older than
7 him. I can't see as well. Thanks.

8 Ladies and gentlemen of the jury, there is no crime
9 here. I'm going to repeat that. There is no crime here.
10 Brian Hartline hid nothing. Brian Hartline deceived no one.
11 Brian Hartline lied to no one.

12 In order to be deceived, you have to actually ask
13 the question in the first place, and in order to lie, you have
14 to have a fact that isn't true, and in order to deceive, you
15 have to know that the other side is interested in facts that
16 the other side never asks you about, because there is no law,
17 no regulation, no law, and Mr. Ignall pointed to no regulation
18 and no law in his opening statement that makes the
19 transactions that underlied the capital that was invested in
20 Nova Bank illegal. None, zip, zero. You didn't hear a single
21 one, and you won't.

22 What you'll hear is that KPMG, the auditing firm, in
23 2010, long after the regulators had decided to give Nova no
24 money, came in and did an audit and said these loans shouldn't
25 count as capital. And those last few things you heard about

Egan - Opening Statement

27

1 Mr. Hartline's alleged coverup was -- he didn't use the words,
2 but that's what he's alleging. They were merely the bank's
3 efforts to convince KPMG that they should count it as capital,
4 because they disagreed with KPMG. The letter that was
5 described to you at the very end there, you're going to get to
6 see it, and I'm glad you're going to get to see it, because it
7 doesn't quite read the way the Government suggests. Ladies
8 and gentlemen, when you're said and done, when we're all
9 finished here, what you're going to find out is there was no
10 crime.

11 Now, ladies and gentlemen, you are here to do a
12 solemn duty. This is the most solemn duty that any citizen,
13 any citizen can be called to do. It's as important as serving
14 in the military. It's as important as voting. You've been
15 chosen to be jurors to judge another citizen, a human being,
16 Brian Hartline.

17 Brian Hartline is a banker. He always wanted to be
18 a banker. He grew up outside Boyertown, Pennsylvania on his
19 grandparents' farm. Can see he was pretty well fed, and he
20 wanted to become a banker because his grandfather in bad years
21 used to go to the local community bank and borrow money to get
22 through the year. You can sit down, Brian.

23 So he went to college. He went to Shippensburg
24 State or Millers -- I got it wrong -- Millers State, Millers --
25 - one of those State colleges, and he got a degree in

Egan - Opening Statement

28

1 accounting. Yeah. They said he's a CPA. He was an
2 accountant for four years before he started banking, before he
3 went into banking, and ultimately, by 2002, he managed to
4 become the head of a community bank, a bank called Nova Bank.

5 Now, we're not talking about New York City bankers
6 here. We're not talking about Wells Fargo. We're not talking
7 about Citibank. We're talking about Nova Bank, a community
8 bank, a bank that gives loans to small businesses to buy
9 equipment so they can keep going, a bank that gives loans to
10 folks like you and me to buy our houses. So when you think
11 about banks, don't think about Citibank. Don't think about
12 Wells Fargo, because when we get into the regulators, we're
13 going to talk a little bit about that as well. When we get
14 into the regulators, they're two different realities. We're
15 talking about a community bank.

16 Nova Bank had about 15 branches. It was fairly
17 successful. I like the use of the language by Mr. Ignall. He
18 said he took over a bank in 2002. Yes. He and some other
19 investors rescued a bank in 2002 that probably would have had
20 to have been taken over by the Government, and they made that
21 bank into Nova Bank, and between 2002 and 2008 and '09 when
22 the events that formed the basis for this case started, they
23 went out and they raised capital many times. You'll learn
24 they raised capital at least four times, pretty much every
25 other year, because you have to raise capital to run a bank,

Egan - Opening Statement

29

1 and you'll also find that when they raised capital in those
2 years before 2008, it was not unusual whatsoever for
3 individuals who wanted to invest in Nova Bank to take out
4 loans from Nova Bank and use the proceeds to invest them in
5 the loans, because the Government wants to call that taking
6 Nova Bank's money and giving it right back to Nova Bank and
7 taking it out of one glass and putting it into the other
8 glass, but guess what. They're just flat out wrong about
9 that, because when a bank makes a loan, that loan goes to a
10 third party, and that third party has independent free will to
11 do whatever they want with that money, and that third party
12 then has an obligation to the bank, which they have to pay on,
13 and then if they choose and they want to use that money to
14 invest in the bank, they can then invest in the bank, and the
15 bank then has that money as an investment.

16 And what you're going to hear from the regulators
17 when we get to them is that there's a certain limit that you
18 can lend up to, and then there's a certain amount of capital
19 that you have, and if you lend money -- and if you just think
20 about it. It's common -- common sense. If you owned a bank
21 and I come to you and I want to borrow money and you lend me
22 money, would you rather that I went and spent that money at
23 the beach on a good time, or would you rather that I invested
24 that money in your bank? I'll be more interested in the
25 success of your bank if I invest that money in your bank. Now

Egan - Opening Statement

30

1 you've got two things, not one thing. You've got my debt,
2 which isn't an IOU. It's a loan, a documented loan that I owe
3 duty on, a legal duty to pay, and you have my investment, and
4 that's really all that took place in this case.

5 Now, the Government wants to talk about subterfuge.
6 The Government wants to talk about hiding things. There is no
7 subterfuge. There is no hiding things, and the very evidence
8 of that will come from their witnesses.

9 Ladies and gentlemen, before I get to that, I need
10 to do a little bit about why we're here and what we're doing
11 here. Now, I'll bet when you all sat out there couple weeks
12 ago bored out of your minds hoping please don't pick me, I
13 would be willing to bet that none of you was thinking that
14 when you got up here and sat here, that the Government would
15 get up and tell you that this is a fraud case where the
16 defendant has got no money and the Government lost nothing,
17 but guess what. It is. I bet you were sitting there thinking
18 what did that greedy guy do; must have done something pretty
19 serious; we're going to be here for a month; holy cow.

20 What did he do, and what did he have to gain from
21 this? You know what he had to gain from this? His job, his
22 salary, and even there, in 2010 when the Board of Directors
23 wanted to give him a raise, he refused it because other folks
24 were getting laid off. You'll hear that.

25 And who will you hear from? You'll hear from the

Egan - Opening Statement

31

1 witnesses who worked at the bank. And you know what those
2 witnesses are going to say? Number one, they're going to say
3 Brian Hartline never told me to lie to anybody. Number two,
4 they're going to say Brian Hartline never hid anything from
5 me. They talk about the purpose of the loan and oh, they
6 didn't know the purpose of the loan. Well, guess what, it
7 wasn't important.

8 If you're going to lend money to a restaurant and
9 the payments for that loan, what's going to come back to you
10 in that loan is coming from the funds that the restaurant
11 generates, then the purpose of the loan is pretty important,
12 because you want to make sure that the restaurant is going to
13 be successful, or you're not getting paid back. If you're
14 lending money to a guy who's worth \$300 million and has a
15 bunch of it in other investments that show up on his bank
16 statements from TD Bank, you don't care what he does with it,
17 because that's not where your payment is coming back from, and
18 you're going to hear the people who reviewed that loan tell
19 you that.

20 In this case, the evidence comes from the witness
21 stand. The Government has the burden of proof, and they have
22 to prove Brian Hartline guilty beyond a reasonable doubt, and
23 His Honor has told you an indictment means nothing. Brian is
24 as innocent sitting there as I am, as anybody in this
25 courtroom is. Anybody. They must prove from the witness

1 stand beyond a reasonable doubt that he's guilty, and he is
2 presumed innocent unless and until they do that.

3 And ladies and gentlemen, there are so many
4 reasonable doubts in this case. There is no way they will be
5 able to do that mostly because there was no law that was
6 broken, and there was no deception. The regulators were not
7 deceived, and what the regulators will tell you is -- and this
8 is great. In April of 2000 -- well, let's talk a little bit
9 about the regulators, because they're going to be first.

10 The CPP was created in the big crisis of October
11 2008. We all remember it. It was a huge crisis. We had to
12 save the country. The banks were going south. So they
13 created the CPP. They create this application for banks to
14 apply to get these TARP funds. Well, not all banks, because
15 remember, two kinds of banks? Citibank, Wells Fargo, Chase,
16 they didn't even have to fill the thing out. Basically just
17 gave them money, hey, you know, you're too big to fail. It
18 was the community banks and the small banks that had to fill
19 out this application. Well, wait until you see this
20 application. You couldn't apply for a car loan with less
21 information. Two pages. Two pages.

22 And you'll learn it was not Brian Hartline who
23 filled out the application. It was the CFO of Nova Bank, Jeff
24 Hanuscin. He's going to testify. Nice guy. He's going to
25 testify he filled out the application. He provided the

1 financials. He's the one who interfaced with the regulators
2 for the first several months. Well, guess what. They file
3 the application. They hear nothing. Months go by. Around
4 April, they start hearing from the FDIC -- from the CPP about
5 whether or not they could give them the -- the funds. They
6 have a whole lot of questions. They want to see all the
7 balance sheets. So everything gets sent to them.

8 Well, now, ladies and gentlemen, we're talking about
9 a bank that is regulated by the Federal Government here at
10 Nova Bank. So not only does Nova Bank have an auditor in
11 KPMG. They've got another company called Merit Partners that
12 comes in and reviews all of their loans. They have the
13 Pennsylvania Department of Banking coming in every year and
14 looking at all of their books and records. They've got the
15 FDIC coming all the time and looking at their books and
16 records. They are inspected 16 ways to Sunday.

17 And this isn't a situation where they say hey, can
18 you tell us about what it is we should look at it. When KPMG
19 or the FDIC or the Pennsylvania Department of Banking comes to
20 a bank to do an investigation and inspection, they send a
21 letter and they say we want all of these documents, and the
22 bank has to provide them all to them. So basically, they're
23 being inspected -- every one of these loans is being inspected
24 by the Federal Government while this process is going on.

25 And this is not a situation where the bank gets to

Egan - Opening Statement

34

1 pick and choose. These auditors come in and they sit there
2 for three to five weeks. You'll hear from the witnesses.
3 They sit there for three to five weeks, and they say I want
4 this, I want that, I want this, I want that.

5 Now, they're going to tell you that a guy, some 50
6 years old, never got in trouble for spitting on the sidewalk
7 is going to hide this nonsense when he knows he's being
8 inspected by four different people? The fact is he didn't
9 know there was anything wrong with it, and the reason he didn't
10 know there was anything wrong with it, because there's no law
11 that says there's anything wrong with it. So there's just no
12 crime.

13 I want to talk about the transactions themselves,
14 because that's what really important here. The Government
15 wants to say took one hand, put it in the other hand, it's the
16 same money. That's just not the way it works. First of all,
17 there's three loans. Actually, there's four loans. Mr.
18 Golleb actually did this twice, and it's interesting. The
19 Government doesn't seem to want to talk about the first time
20 he did it, because the first time he did it, he applied for
21 the loan before TARP existed, and he invested in the bank
22 about two days after TARP came into being. So clearly, that
23 has nothing to do with any alleged conspiracy, but it's the
24 exact same behavior. He borrowed money. He invested in the
25 bank.

Egan - Opening Statement

35

1 And guess what. That was in the fall of 2009 --
2 '08. KPMG came in in 2009 and audited the books and said
3 nothing about it. They didn't say well, that loan is a
4 problem. Merit Loan Partners, who's another independent
5 review people, come in and look at all the loans. They came
6 in and looked at all the loans in 2009. They didn't say
7 anything about it. They didn't say there's a problem. How's
8 he supposed to know this is a problem if his auditors aren't
9 telling him?

10 Then Mr. Golleb does that, borrows the money, but
11 they want to make it sound like oh, Brian Hartline said lend
12 them the money, we'll just lend them the money, it happens
13 right away, there's no issue here. That's not the way it
14 works. He has to file an application. The application goes
15 to the bank. The underwriter, which the Government spoke
16 about, Mr. Madiany, another really nice guy you'll get to meet
17 -- Mr. Madiany is the underwriter. He's not the credit
18 manager. He's not in charge of credit. He just reviews the
19 loan to see whether certain documents are there and certain
20 documents aren't, and the underwriter then sends it to the
21 credit manager.

22 The credit manager is a guy named Mark Poliski.
23 He's critical in this case. Now, as His Honor has explained
24 to you, the Government has the burden of proof. The
25 Government decides who they're going to call and who they're

Egan - Opening Statement

36

1 not going to call, but I suspect you will hear from Mr.
2 Poliski, and I certainly hope you do, because Mr. Poliski is
3 the credit manager, and Mr. Poliski is actually the guy who
4 had to determine whether Mr. Golleb, Mr. Levin, and Mr. Bonomo
5 were creditworthy and deserved these loans, and what Mr.
6 Madiany is going to tell you is yeah, I sent the thing up to
7 him with some questions, but it's not my job to tell Mr.
8 Poliski whether he should or he shouldn't approve it, you
9 know, I work for him.

10 So it went up with the questions, and Mr. Poliski
11 approves it. It doesn't even reach a loan committee unless
12 Mr. Poliski approves it, and you know what you're not going to
13 hear, I guarantee you? You're not going to hear that Brian
14 Hartline ever went to Mark Poliski and said you better approve
15 this loan, this is a big deal, you've got to approve this
16 loan, don't tell anybody what it's about, this is a big
17 secret, we're hiding this from the Government. No, sir. No
18 way. That never happened.

19 Mr. Poliski looked at the stuff and said hey, this
20 is a businessman with a really good business who has plenty of
21 money, why don't we lend it to him. Good idea. That's how
22 banks make money, by lending people money. That's how they
23 make income. Another thing they get out of the loan, which
24 the Government wants to say they get nothing out of making out
25 of making a loan, but I don't know.

Egan - Opening Statement

37

1 Anyway, Poliski approves the loans. First, Golleb.
2 Later, Levin and Bonomo and Golleb again. Then it goes to a
3 loan committee. Not to Brian Hartline, a loan committee, five
4 different people. Dave Deitrich, Jeff Hanuscin, the CFO,
5 Poliski himself, Brian and another who escapes me right now.
6 They all have to vote on it. They have to approve the loan as
7 well, and not a single one of them is going to come in and say
8 to you that this man ever put pressure on them or told them
9 they had to approve that loan or ever hid anything from them.

10 They didn't ask about the purpose of the loan for
11 the reasons I just told you, because in certain cases, it
12 doesn't really matter that much. Some of them knew. Some of
13 them didn't. Makes no difference. They want to make a big
14 deal out of that, but it's just not a big deal.

15 Anyway, Levin -- so that's the first Golleb loan, as
16 I told you, is reviewed. In the fall -- in the spring,
17 there's this guy, George Levin. He meets Mr. Bekkedam. He's
18 apparently a very wealthy man. By all intents and purposes,
19 everyone believed he was worth a minimum \$300 million in the
20 spring of 2009, and he is in Florida, but he has a house in
21 PA. I guess he grew up around here. He's got family around
22 here, whatever. He's got this big house in Devon, big fancy
23 place, and he lives in Florida, and he has all of this money,
24 this \$300 million involved in this investment thing that he's
25 got going on, and it -- it's all in TD Bank, and he would like

Egan - Opening Statement

38

1 to not be in TD Bank. He'd like to be in a bank that was
2 friendlier than him, so him and -- and Bekkedam get to
3 talking, and the idea -- and Mr. Levin I'm sure will say this
4 -- was that Nova might actually expand and go into Florida,
5 and Levin could then use the bank and have his money in the
6 bank and give a better deal.

7 He signed a subscription agreement. That is an
8 agreement to buy \$18 million worth of Nova stock, and he
9 signed it before -- early in June of 2009. That is a legally
10 binding commitment to buy that stock.

11 What does Brian Hartline do? He tells the
12 regulators, yeah, we've got this guy, he's coming to buy
13 \$15 million of stock. There's no lie there. It's truth. He
14 did commit to do it, and he probably would have done it except
15 for his investments ended up going south. Regardless, it's
16 not a lie.

17 Now, most rich folks don't really like to spend
18 their own money or invest their own money, because what they
19 like to do is leverage it. So if I can borrow money from you
20 at seven percent and invest it and get ten percent, I got more
21 money. That's how people get rich. I should have learned
22 this when I was younger, but in any event, that's what Levin
23 is doing here. He just wants to borrow the money from Nova so
24 that he can leverage it and make more money on it, because his
25 investments are paying more money. Probably why they

Egan - Opening Statement

39

1 ultimately failed, and, you know, I guess they were probably -
2 - you know, they -- they were -- probably couldn't sustain
3 that. I don't know. That's not an issue here, but he's
4 thinking I can make more money off that money. So let me get
5 the money from Nova, and then I'll have my money to use on my
6 things. There is nothing wrong with that. Nothing. It's
7 completely legal. The Government concedes the loans are
8 completely legal.

9 The only question is whether the capital that Nova
10 Bank represents to the Government is appropriately considered
11 capital, and guess what that comes down to. You'll like this.
12 Comes down to something called EITF85-1, which is an Emerging
13 Issues Task Force recommendation or something that is made to
14 auditors to apply gap to the bank's finances.

15 And what you're going to hear from the accountant at
16 KPMG, the expert who comes in, is that right around the time
17 that he finds out about these loans when he's examining the
18 place in 2009 -- 2010, he learns of this EITF85-1 and decides
19 to apply it. Now, how Brian Hartline is supposed to know
20 about that in June of 2009 is beyond me, and you won't hear
21 any evidence that he knew about it. What you'll hear is he
22 disagreed with the guy from KPMG when he came up with that.
23 What you'll hear from the CFO when he comes and testifies,
24 Jeff Hanuscin, is he still disagrees with it. He still
25 doesn't think there's any problem here. Yet, they want you to

Egan - Opening Statement

40

1 convict this man based on KPMG's auditor's judgment. That's
2 all they've got. That's it.

3 Talk a little bit about the transaction where the
4 investment takes place. I told you there's an investment --
5 there's a subscription agreement that has to be signed. Well,
6 guess what. There's also an actual transaction there too,
7 because you buy stock, you get stock. Guess what. Mr. Levin,
8 Mr. Bonomo, Mr. Golleb, they all got stock for their
9 investments. They voted that stock. The Government wants to
10 call this what's -- and they didn't use the term in the
11 opening. I'm a little surprised. They want to call it
12 roundtrip or a circular loan.

13 A roundtrip or a circular loan requires that the
14 people you lend the money to who send it back be under your
15 control, right? Did you hear him say that Bonomo, Levin, and
16 Golleb were co-conspirators? Did you hear him say that they
17 were in on this deal?

18 Now, they want to say these guys had a conspiracy to
19 loan money to these guys to get money back in the bank. Well,
20 when the money gets to those guys, they don't have to send it
21 back. How can that be a conspiracy? How can that be an
22 agreement? It can't. It's just not there.

23 Now, I want to talk about the purported coverup,
24 because the Government said something really interesting.
25 They said Todd Howard discovered -- I wrote it down -- he

Egan - Opening Statement

41

1 discovered that this went on. Guess how Todd Howard
2 discovered that this went on. Brian Hartline told him. He
3 told him in a conversation. He said hey -- after Levin's
4 investments started going bad, he said, you know, we loaned
5 him money, this is a problem, you know, we're worried if he's
6 going to pay us back or not. He has an obligation to pay us.
7 He was still paying, by the way. Levin paid on this for more
8 than a year after he went south, but Golleb paid all of his
9 loans back.

10 So I'd like to know that. Just take a side. I want
11 to go back to Todd Howard, but I can't -- ask yourselves this.
12 If Charles Golleb borrowing money for Nova, to invest in Nova
13 is only one thing and it's not -- it doesn't -- you know, it
14 does -- the bank has nothing more, Charles -- and it's part of
15 some conspiracy, why does Charles Golleb pay it back? He paid
16 back the entire loan. Not only that, he made a second
17 investment after they'd been denied TARP already. Golleb
18 makes a second -- makes -- borrows the second money in -- I
19 think it was in November of 2009. No. December, 2009. We're
20 told on December 15th you're not getting TARP. The letter he
21 wants to talk about is Brian writing to the regulators
22 basically saying hey, man, you've been stringing us along for
23 a year and you're not giving us this money; we did everything
24 you asked us to and you're still not giving us this money.
25 And you know what you're going to find out? The reason they

Egan - Opening Statement

42

1 didn't give them the money in December, they knew already in
2 April. This guy from the Federal Reserve Bank is going to
3 come in here, and he's going to tell you I looked at this
4 thing in April, and I said this thing was dead on arrival. My
5 words, not his. Something along those lines. And then
6 they're going to say that in December, we denied it for the
7 very reasons we told you in April we weren't going to give it
8 to you for. Yet, that -- they're going to say that those
9 folks were deceived, that they were defrauded.

10 Anyway, back to Todd Howard. Todd Howard found out
11 from Brian Hartline about these transactions, and he said I'd
12 like a letter from a lawyer. So Brian said sure. I mean, he
13 didn't jump on it, do it the very next day. No. It took like
14 a month before he started to do it.

15 Now, Mr. Ignall says that Brian Hartline sends a
16 different document over to Mr. Schwartz, the lawyer, than was
17 in the file. First of all, Mr. Hartline didn't send Mr.
18 Schwartz anything. Other people at the bank sent it. Second
19 of all, there's a very good reason why that second document
20 was created, because later in the year, Mr. Levin wanted to
21 borrow more money, and the folks at Nova said we can't lend
22 him any more money unless it's secured this time, and so
23 therefore, they created another risk assessment summary
24 involving the house. And that's why a second risk assessment
25 summary existed, not because anybody made it to fool anybody.

Egan - Opening Statement

43

1 It just happened to be there.

2 Along with that risk assessment summary was every
3 other document related to this loan, and when you read the
4 letter that the lawyer wrote, it says -- I think I -- I have
5 to quote it, because I don't want to misquote it. It says,
6 "Contemporaneously with obtaining the line of credit, Mr.
7 Levin made an equity investment." What's hidden here? The
8 same time he borrowed the money, he made an investment. Oh,
9 and by the way, this lawyer says there's no issue with it.

10 Ladies and gentlemen, they have to prove beyond a
11 reasonable doubt that Brian Hartline intended to lie to the
12 Government, that he schemed to lie to the Government, and in
13 order to do that, they need some evidence. The only evidence
14 they have is two or three documents cherry picked from
15 thousands of documents that were at the bank that relate more
16 to trying to get KPMG to still count it as capital, because
17 they wanted to succeed going forward, because they'd forgotten
18 about TARP long ago because the Government denied it for
19 different reasons six months ahead of this.

20 And guess what. They did succeed. In spite of all
21 this, Nova Bank stayed in business until 2012, and under the
22 weight of other -- other issues and other financial concerns
23 failed. So they didn't fail because of anything that was done
24 here. The Government lost no money because of anything that
25 was done here. Brian Hartline got nothing out of anything

Egan - Opening Statement

44

1 that was done here, because there was no crime here. There
2 was no crime.

3 Now, at the end of the day -- taking too much of
4 your time already. We're going to take way too much of your
5 time over the next few weeks, but at the end of the day when
6 all of this evidence comes in, when you get to listen to what
7 the witnesses actually say and hear the cross-examination of
8 the witnesses, remembering their burden of proof, I'm going to
9 come back and ask you for the only possible verdict, because
10 Brian Hartline is not guilty. Thank you.

11 THE COURT: Once again, if you wish to stand up and
12 stretch your legs for a moment.

13 MR. DUNCAN: Your Honor, may we approach?

14 THE COURT: Yes, sir.

15 (Sidebar begins)

16 THE COURT: Yes, sir?

17 MR. DUNCAN: Don't know what the proper term is, but
18 a point of personal privilege. Could I have about a two-
19 minute break, Your Honor, right now?

20 THE COURT: Sure.

21 MR. DUNCAN: Thank you.

22 THE COURT: Sure.

23 (Sidebar ends)

24 THE COURT: Let's actually take about a ten-minute
25 break before the last. All right.

Egan - Opening Statement

45

1 (Record off/on)

2 THE COURT: -- opening. When you point out a couple
3 things on the screen over there, nothing came up on mine. So
4 now we got to --

5 MR. IGNALL: Okay.

6 THE COURT: -- including --

7 UNIDENTIFIED COUNSEL: I made that happen, Judge,
8 because I didn't want you to have to see that.

9 THE COURT: Oh, okay. In that case --

10 MR. IGNALL: All right. Just for our scheduling
11 purposes, is the Court going to take a lunch recess?

12 THE COURT: We have to.

13 MR. IGNALL: I just -- when our first witness should
14 be here.

15 THE COURT: Well, at this point, assuming that Mr.
16 Duncan is going to be half an hour or so, like everyone else,
17 I could conceivably work from 11:30 to 12:30. Is there an
18 issue with that?

19 MS. SHEALY: If we're taking a ten-minute break now,
20 then that's 11:15. So then we're not finished until closer to
21 11:45 or so.

22 THE COURT: Okay. In that case, we'll go ahead and
23 take a lunch break.

24 MR. IGNALL: Okay. So I just wanted to know when to
25 have a witness here. Okay.

Egan - Opening Statement

46

1 MR. EGAN: And is it Bertsch or Schaffner.

2 MR. IGNALL: Schaffner.

3 MR. EGAN: William?

4 A FEMALE SPEAKER: Yes.

5 MR. IGNALL: Yes. William Schaffner.

6 A FEMALE SPEAKER: William Schaffner.

7 MR. IGNALL: Okay.

8 MR. EGAN: Thanks, Your Honor.

9 THE COURT: Okay.

10 MR. IGNALL: Thank you.

11 (Recess taken, 11:03 a.m. to 11:13 a.m.)

12 MR. IGNALL: Your Honor, can we approach?

13 THE COURT: Surely. Yes, sir.

14 MR. IGNALL: Brief sidebar.

15 THE COURT: Madam.

16 (Sidebar begins)

17 THE COURT: Yes, sir?

18 MR. IGNALL: I instructed the agents and I followed
19 this rule too, that we should not go to the bathroom on this
20 floor so we don't run into jurors. We went one floor down,
21 and I do not believe I said anything substantive other than
22 someone said good job. I said yeah, I wish I was more -- you
23 know, I didn't use a script at all. Turned out one of our
24 jurors was down in the bathroom on 14. I don't think I said
25 anything substantive.

Egan - Opening Statement

47

1 MR. EGAN: 13.

2 MR. IGNALL: On 13, one floor below. I don't know
3 if it's worth colloquying him, but I just want to bring it to
4 the Court's attention. I brought it to counsel's attention.

5 MR. EGAN: I have no issue.

6 THE COURT: I think it's no harm, no foul --

7 MR. EGAN: Yeah.

8 MR. IGNALL: I think --

9 THE COURT: -- right now.

10 MR. IGNALL: -- my concern about it.

11 THE COURT: Make a deal out of it, make something
12 out of it --

13 MR. IGNALL: Yeah.

14 THE COURT: -- that isn't.

15 MR. IGNALL: Yeah.

16 THE COURT: However, we'll make sure that the jurors
17 go here on this floor --

18 MR. IGNALL: Okay.

19 THE COURT: -- and --

20 MR. IGNALL: All right.

21 THE COURT: -- (inaudible).

22 MR. IGNALL: All right.

23 THE COURT: Okey-dokey.

24 MR. IGNALL: Thank you.

25 THE COURT: Thank you very much. Appreciate the

Egan - Opening Statement

48

1 integrity.

2 (Sidebar ends)

3 THE COURT: So we'll just tell our jurors to stay on
4 this floor.

5 And counsel, if you could impart to your respective
6 witnesses the same thing to other floors other than this one.

7 MR. EGAN: Okay.

8 MR. IGNALL: Yes, sir.

9 THE COURT: Thanks. Are we ready? Are we ready?

10 COUNSEL: Yes, Your Honor.

11 COUNSEL: Yes, Your Honor.

12 COUNSEL: Yes, Your Honor.

13 THE COURT: Am I going to be able to see this on my
14 screen, Mr. Duncan?

15 MR. DUNCAN: I hope so, Your Honor, but I'm not the
16 technical person. If I could ask Sean or Peggy, just let me
17 know.

18 UNIDENTIFIED SPEAKER: Do you mind if I come up and
19 take a peek?

20 THE COURT: No, please. How you been?

21 UNIDENTIFIED SPEAKER: Pretty good. How about
22 yourself?

23 THE COURT: Okay. How's everything? Good to see
24 you again.

25 UNIDENTIFIED SPEAKER: Good. See you --

Duncan - Opening Statement

49

1 THE COURT: All right. Okay. Thank you very much.
2 Okay. We're going to get the jury.

3 (Transcriber change)

4 THE COURT: All rise.

5 (Jury in)

6 THE COURT: You may be seated. Thank you.

7 Mr. Duncan, do you wish to address the jury at this
8 time, sir?

9 MR. DUNCAN: Thank you very much, Your Honor.

10 THE COURT: You may proceed.

11 MR. DUNCAN: May it please the Court, Ms. Barry, Mr.
12 Ignall, counsel, Mr. Hartline, ladies and gentlemen of the
13 jury, good morning.

14 THE JURY: Good morning.

15 MR. DUNCAN: Mr. Bekkedam and I have waited a long
16 time to get to talk to you, and on behalf of Mr. Bekkedam --
17 Barry, could you please stand up for the jury? This is our
18 client, Barry Bekkedam. You'll be hearing a lot about him
19 over the next few days.

20 But I want to thank you on behalf of Mr. Bekkedam --
21 thank you, Barry, you can sit down -- thank you on behalf of
22 Mr. Bekkedam and his family and all of us working here today
23 -- Allison, Joel, Mike -- we want to thank you for your
24 services and your attention.

25 The Government has alleged that this is a case where

Duncan - Opening Statement

50

1 Brian and Barry conspired, that is they agreed to attempt to
2 defraud the Troubled Asset Relief Program, TARP, but the
3 evidence will show that is not what this case is about.

4 The evidence will show that this is a case about
5 Government investigators trying relentlessly, obsessively for
6 over five years to come up with evidence of a crime where no
7 crime was committed.

8 This is a case where the facts do not match the
9 crime that the Government said took place. And as you will
10 see over the next few weeks and as you will hear, and the
11 evidence I'm about will make this clear, this evidence
12 matters.

13 And this evidence will speak to you about facts, and
14 those specific facts matter, and I ask you to listen very
15 carefully to the facts for the dates when those facts
16 occurred, what occurred on those dates, why they occurred on
17 those dates.

18 So if there is no crime, why are we here? What the
19 Government says Barry did -- allegedly did amounts to this, in
20 2009 Barry's wife introduced him to a man named George Levin
21 -- I'll speak a little bit more for you, but for now the
22 evidence will show that in 2009 George Levin was a fabulously
23 wealthy person.

24 The estimates vary. I heard Mr. Egan say 300
25 million. I've heard 400 million. But everybody agrees, he's

1 worth someplace north of \$100 million -- \$100 million. Once
2 you get to that level, how much further you get I'll leave to
3 you all.

4 And the evidence is going to show that this
5 incredibly wealthy person wanted to invest some of that wealth
6 in a bank for a very legitimate reason, for the reason wealthy
7 people do things, he wanted to make more money.

8 In June of 2009 this incredibly wealthy person,
9 George Levin, signed a subscription agreement -- you heard
10 about the subscription agreement, here it is, you're going to
11 see this in evidence. Levin signed the subscription agreement
12 in which he agreed he was going to put \$18 million into Mr.
13 Hartline's bank, Nova, a little Community Bank up in Berwyn,
14 Pennsylvania.

15 Mr. Ignall will tell you he was doing a favor for
16 Barry Bekkedam. Some favor, \$18 million. We all need to have
17 friends like that. You heard a lot about Mr. Levin's other
18 investments, and they're going to become important, but
19 they're important right now for this fact.

20 Mr. Egan, I'm sorry -- I'm going to have to repeat a
21 few of the things Mr. Egan told you because I think they're
22 important and I want to tell you about them for Mr. Bekkedam's
23 part. Mr. Levin wanted to move the money he had in TD Bank
24 and that Banyon Fund where he didn't have any control over TD
25 Bank.

Duncan - Opening Statement

52

1 He wanted to move that money into a bank where he
2 had some control, and you're going to hear evidence about
3 that, ladies and gentlemen. He wanted to do that for a couple
4 of reasons. One, the money is in that bank and he has control
5 of that bank, he's getting the interest money, all those
6 deposits in that bank.

7 Second, you're going to hear a lot about Mr. Levin
8 leveraging his money. You've already heard a little bit about
9 that, but if he gets control over the bank, he's going to be
10 able to go to that bank very easily and get a loan, so those
11 are the two reasons Mr. Levin wanted to invest in the bank.

12 Mr. Egan told you -- I'm going to emphasize it here,
13 rich people don't like to use their own money. They like to
14 leverage their money. They like to use their money to get
15 more money. You're going to hear that this incredibly wealthy
16 guy, George Levin, already had one line of credit at another
17 bank, Mellon Bank.

18 He had \$5 million in credit at Mellon Bank. But he
19 doesn't want to use his own money, he wants to use somebody
20 else's money to make more money so he applied for another
21 loan. And what you didn't hear in any great detail from the
22 Government is he went to two banks.

23 We've heard a little bit about this but that's a
24 very important fact that as you hear the evidence, and as I
25 recounted to you, pay attention to that fact -- two banks.

Duncan - Opening Statement

53

1 One of the banks was Nova, and just like Mellon Bank, Nova was
2 more than happy to give this really rich guy a loan.

3 Levin then used that \$5 million and there's no
4 question about this at all, ladies and gentlemen, he used that
5 \$5 million to invest in Nova Bank, but that, ladies and
6 gentlemen, was because he promised he would. He signed that
7 subscription agreement.

8 The Government's theory is that Barry knew about
9 this loan and the Government's theory is because Barry did not
10 tell any of the bank regulators in charge of the TARP program
11 or any of the other investors in Nova Bank that George Levin
12 had obtained a loan before he invested in the bank. It's
13 because of this omission, Barry's failure to mention this fact
14 -- that's what the Government says Barry did wrong. That's
15 it. Not that Barry lied to anyone, but that he did not tell
16 anyone about that simple little fact, that George Levin, this
17 very rich people (sic), had done this thing that rich people
18 do all the time.

19 You're going to hear a little bit more about one of
20 the rich people, one of the Government's witnesses, he did it
21 too. That pretty ordinary fact that rich people get loans,
22 that's what the Government says Barry did wrong.

23 But the evidence will show that Barry never did any
24 such thing, nor did he ever intend in any way, shape or form
25 to deceive anybody. You're going to hear a lot of testimony

Duncan - Opening Statement

54

1 and you're going to see a lot of evidence over the next few
2 weeks, and I'll not have an opportunity to speak to you like
3 this again until the end of the case, so I'll ask you to
4 please focus on three things.

5 As you listen to the testimony and as you see the
6 exhibits and consider whether the Government has met its
7 burden of proof of proving beyond a reasonable doubt that
8 because my client didn't say that this really wealthy person
9 had gotten a loan, he's guilty of crimes.

10 The three things you're going to learn about is
11 what's missing from the Government's case. First, you will
12 not hear any testimony, you will not see any evidence that any
13 Government dollars were ever given by Nova -- given to Nova by
14 TARP or that any Government dollars or taxpayer money was ever
15 lost or that Barry Bekkedam ever got one dollar out of that.

16 Sean?

17 No money obtained or received by Nova from the
18 Government. That's fact number one I want you to remember.
19 Second, regarding this supposed agreement between Brian and
20 Barry, you will not see any evidence, no document, no email,
21 no letter showing that Barry Bekkedam and Brian Hartline
22 agreed, conspired or even thought about defrauding the
23 Government of TARP funds, none.

24 Sean?

25 No agreement. And if there's no agreement, there's

Duncan - Opening Statement

55

1 no conspiracy.

2 MR. IGNALL: Your Honor, may I see you at sidebar?

3 THE COURT: Surely.

4 (Sidebar begins)

5 MR. IGNALL: Your Honor, I don't believe these
6 slides -- I don't believe these were the slides that I saw
7 that Mr. --

8 MR. DUNCAN: They're actually less than the slides
9 you saw. They're the exact same slides, we just actually took
10 out of the points, even less. I'm sorry, I'm happy to -- to
11 do, but they're the exact same -- exact same --

12 UNIDENTIFIED COUNSEL: This is (inaudible) slide and
13 we all agreed --

14 MR. IGNALL: Well no, no, they're something
15 different.

16 THE COURT: Keep your voices down, please.

17 MR. IGNALL: I don't remember seeing that.

18 THE COURT: Keep your voice down.

19 MR. IGNALL: I remember the calendar with different
20 dates, about what happened on different dates.

21 MR. DUNCAN: Yesterday, Your Honor, we asked -- you
22 said take out the top part. Go with all the pictures below
23 and we could use the top part. They specifically audited,
24 that's what these are.

25 THE COURT: But I thought you all had agreed on this

Duncan - Opening Statement

56

1 today.

2 MR. DUNCAN: We agreed --

3 MR. IGNALL: I --

4 MR. DUNCAN: We agreed to that yesterday, Your
5 Honor.

6 THE COURT: Okay.

7 MR. IGNALL: All right, I didn't realize that he was
8 going to use what he mentioned yesterday. That's fine if
9 that's all it is I have no objection. I'm sorry.

10 THE COURT: Thank you.

11 (Sidebar ends)

12 MR. DUNCAN: May I proceed, Your Honor?

13 THE COURT: You may continue.

14 To the jury, counsel just wanted to make sure that
15 this is accurately agreed upon, and it was.

16 You may continue.

17 MR. DUNCAN: Sean, put number two back up, please.

18 Very important, there's no agreement. There's no
19 agreement, there's no conspiracy.

20 Third, you will see no evidence, no document, no
21 letter, no email, no text, nothing, not one single piece of
22 evidence that Mr. Bekkedam -- Barry, every communicated,
23 called, wrote, emailed, text or anything with the Government
24 regulators, nothing.

25 He had nothing to talk to the Government regulators

Duncan - Opening Statement

57

1 about -- TARP, banking regulations or anything. Nothing. And
2 as you listened to the two opening statements you might have
3 noticed that there wasn't a whole lot about Barry, and there
4 sure wasn't a whole lot about Barry with bankers because Barry
5 doesn't have anything to do with the bankers, nothing to do
6 with bank regulation.

7 Point number three that I want you to remember,
8 Barry never communicated with these regulators. The
9 Government has said that the evidence will show that Barry and
10 Brian agreed to commit this attempted fraud in May of 2009,
11 however, the evidence will show that the Government is wrong
12 not only about Barry and Brian conspiring to commit this fraud
13 in May, 2009, the evidence is going to show it was impossible.
14 They couldn't have done it.

15 Why? The Government has said that Barry and Brian
16 entered into this conspiracy in order to meet a requirement by
17 the Treasury Department. Treasury is the Government agency
18 that ran the TARP program. Treasury told Nova Bank to raise
19 \$15 million dollars.

20 I'm going to refer to that as the 15 million
21 contingency but there's a problem with that, which I'll get to
22 in just a moment. The evidence will show that Barry and Brian
23 couldn't have agreed to defraud the Government by lying about
24 this information in order to meet the contingency in May of
25 2009 because no such contingency existed in May of 2009, none.

Duncan - Opening Statement

58

1 The Government's own evidence, their own exhibits
2 will show you this. Mr. Ignall mentioned it. The CPP, that
3 -- I forget the acronym now but the Government agency that was
4 voting on this, they didn't even vote until June 10th, so how
5 could they do it in May of 2009? No contingency existed in
6 May. It didn't exist until June.

7 And this -- this document -- one more thing, this
8 document, this is a Treasury document -- this document never
9 went to Barry Bekkedam. Barry Bekkedam never saw this.
10 Nobody told Barry Bekkedam about this. He didn't have any way
11 of knowing that Treasury had done this.

12 So in June it was just impossible for them to
13 conspire -- or in May to conspire about that contingency, and
14 how do we know that? What other evidence are you going to see
15 that's going to show you that? It's really important. TARP
16 wasn't approved for Nova -- again, you'll see it in evidence
17 the TARP letter, August 25th, 2009.

18 So how can Barry and Brian be conspiring in May to
19 defraud the Government out of TARP funds by lying about a
20 contingency that doesn't even exist until August?

21 One of the things that Judge Jones told you, and I
22 want you to really remember this -- it's obviously he'll tell
23 you a lot of good things but you bring nothing more to us more
24 important than your common sense. How can you do this if it
25 doesn't even exist?

Duncan - Opening Statement

59

1 One other little thing. Remember I told you there
2 was a little problem with that \$15 million contingency?
3 You'll get to see it in evidence and you'll hear witnesses
4 talk about it, there never was a \$15 million contingency.
5 TARP cut it to \$10 million, and you're going to hear back and
6 forth ten, 15.

7 It won't really matter in terms of what you
8 determine, but think about that in terms of what the
9 Government is saying. They're saying it's \$15 million but
10 it's only ten. That's a \$5 million difference. They got that
11 wrong too. The dates are important.

12 They will help explain to you why something happened
13 and what happened, so as you listen to this evidence, I ask
14 you to think about that, and the evidence will show the
15 Government investigators got this so wrong and the evidence
16 will show that Barry Bekkedam is not guilty.

17 So what did happen? What did happen? Why are we
18 here? I won't go over it in as much detail as Mr. Egan did
19 but it's important. It's about Nova Bank, it's a small
20 community bank in Berwyn, Pennsylvania.

21 Barry and Brian, way back in 2002, worked together
22 in order to make sure that this bank didn't fail, as Mr. Egan
23 told you, so that the bank could be successful and give loans
24 to people in that community. The story could begin in many
25 places, but let me go back before Brian and Barry ever even

Duncan - Opening Statement

60

1 met.

2 You've already heard about Mr. Egan's (sic)
3 background and let me tell you a little bit about Mr.
4 Bekkedam's background. Barry first came to Philadelphia in
5 the 1980s to go to high school at Archbishop Carroll and then
6 after that to play basketball at Villanova.

7 After his college career ended he didn't get drafted
8 by the NBA, but he played professionally for a little while.
9 He went overseas and knocked around there, and then he came
10 back to Philadelphia. He got married, started to raise his
11 family and now has six children. And he didn't start at the
12 top. He started at the bottom.

13 He worked in real estate development. But this is
14 what the real estate did that Barry worked in, he was the
15 construction guy. He was filling the dumpsters. He was
16 helping put together the real estate properties. He was
17 maintaining, he was doing the painting. That's what Barry
18 did.

19 But Barry wanted to do a little bit more so he
20 eventually got into finance and became a money manager and a
21 fundraiser and got his own company, Ballamor Capital. You
22 heard about that. One thing you're going to hear that Barry
23 was very, very good at, he was very good at raising money and
24 helping other people put together business skills.

25 Former athlete, local fame, he was very good at

Duncan - Opening Statement

61

1 that. But he owned his own capital and he worked -- own
2 company and he worked really hard at Ballamor Capital, and
3 you're going to hear a lot about Ballamor Capital and you may
4 hear about some of their former employees. You heard about
5 one earlier, Todd Howard.

6 Ballamor Capital was a registered investment
7 advisory firm. Those are people who help people manage their
8 money. Maybe you have someone. I have one. It's not a bad
9 idea. It's a good thing to have happen. And this is how
10 Brian and Barry first sort of got together, because of Barry's
11 money raising abilities and his ability to put together deals.

12 You heard that there was this bank, U.S. Bank Shares
13 here in Pennsylvania, it was failing. Brian Hartline went to
14 Barry Bekkedam and talked to him about raising money and Barry
15 had the clients at Ballamor Capital who could do that, who
16 they put together some money, raised the money, offered it to
17 the bank and helped purchase the bank and save the bank. You
18 heard the bank was later called Nova, Mr. Hartline became the
19 President.

20 This is Barry's role at the bank. Barry served as
21 the unpaid Chairman of Nova Financial Holdings Company, that's
22 the company that owns Nova actually -- all that corporate
23 stuff. He also served you're going to hear on the Nova Bank
24 board, both jobs without compensation. He didn't get paid a
25 dime.

Duncan - Opening Statement

62

1 You're going to hear -- Sean, calendar, please --
2 next one, please -- Barry Bekkedam left the Nova Bank board in
3 2004.

4 Next one, Sean, please.

5 He left the holding company board in 2007. We're
6 going to be talking about things happening in 2009. The
7 evidence will show that 2007 was the last date that Barry
8 Bekkedam had any kind of control over Nova Bank.

9 He still had influence with Nova Bank, don't get me
10 wrong. He had a lot of clients who had invested in Nova Bank.
11 It was his baby. He had helped put it together, so sure he
12 cared about it, but no formal influence, no contact with the
13 bank regulators, nothing at all.

14 Let me go back just a minute to George Levin.
15 George Levin's bank, this business you heard about his being
16 in, it's basically this. It's a settlement fund. People get
17 settlements in cases, they get paid out over time. People
18 don't want to wait over time so they sell the settlements at a
19 discount, they make some money right away.

20 The investors in the Banyon Fund, they make some
21 money because they sold it at a discount, but they're going to
22 get all the cash in going forward. And that's what Banyon
23 was. What is Barry good at? He's good at fund-raising. He's
24 good at money. He's good at putting together business deals.

25 George Levin is raising money to fund the

Duncan - Opening Statement

63

1 settlements, so when he and Barry meet back in 2009 it's a
2 perfect match for them. Barry has his Ballamor clients who
3 could invest in this Banyon Fund, make money. He knows about
4 Nova Bank, and he knows, as you've heard, George Levin wanted
5 to buy a bank or get involved with the bank.

6 And he was looking down in Florida, and Mr. Egan
7 told you, maybe Nova was going to be down in Florida. But
8 Barry had a different idea. Barry saw something that was a
9 win-win for his two friends, George Levin and Brian Hartline.
10 Barry though well, why don't we bring that money up here to
11 Nova and put it in the Nova Bank.

12 You to use that money to expand? Maybe we'll expand
13 down to Florida where you are. George Levin lived in Florida,
14 but you already heard that. That fabulous fortune he made, he
15 made it here in Pennsylvania, so he has significant ties here.
16 He grew up here. He has two daughters still living here. He
17 owns that house you heard about, that house in Devon. Common
18 sense makes sense -- Barry putting together deals. This is
19 what happens.

20 And remember, George isn't doing this because he
21 Barry's friend, George is doing this because he wants to make
22 money. Sign that subscription agreement, a legally binding
23 document. I'm going to do that, I'm going to invest \$18
24 million into Nova Bank and I'm going to become the largest
25 shareholder.

Duncan - Opening Statement

64

1 Okay, if I'm not there already, I'm going to get
2 real lawyerly and boring on you. This is something you need
3 to know a little bit about though. It's called a Change in
4 Control. It's a bank regulation. So if you want to take over
5 a bank or invested a lot of money in a bank, you've got to
6 have a Change in Control thing done.

7 You can own 9.9 percent of the bank without doing a
8 Change in Control, but once you go over that, you've got to
9 get the Federal Reserve Board to come in and approve you. Why
10 \$5 million invested in Nova Bank? Why not the whole 18
11 million right in? He was going to go over the 909 percent.

12 If he invests 5 million, then he's going to be at 9
13 percent so he doesn't need the Change in Control done yet, so
14 that's why he invested the 5 million in June of 2009. What's
15 the Change in Control process? It's just what it sounds like.
16 You fill out an application -- and you're going to see that
17 application -- Mr. Levin fills it out on June 30th, 2009,
18 sends it into the Federal Reserve Board, the Pennsylvania bank
19 regulators.

20 He has to publish notice in papers that he's doing
21 this and let everybody know if anybody has an objection. He
22 gets fingerprinted. He's got to get investigated by the FBI
23 to see if there's anything in his background that they should
24 know about, and hopefully he gets approved by the regulators.
25 He puts the \$18 million in. Everything's fine. So that's why

Duncan - Opening Statement

65

1 5 million in June. Got it? That's it.

2 You heard a little bit about this other loan I
3 mentioned, the two loans. It's going to become important to
4 you and I'll -- you'll hear more about it in the testimony, I
5 won't get into it in great detail, but it's important to know
6 when it happens. Remember when I said dates matter?

7 Sean, could you do the next one, please?

8 So on May 28th, 2009 -- remember, before CPP even
9 gets a chance to talk about contingency -- and you're going to
10 see the evidence, loan being applied for at Atlantic Community
11 Bankers Bank, not at Nova Bank, Atlantic Community Bankers
12 Bank, and remember that as you're listening to the testimony.
13 It's going to become important, and if I get back here in
14 closing, I'll tell you why.

15 Why June 30th? Well, there are a couple of reasons.
16 Why does the money have to go in June 30th? You're going to
17 hear testimony like Nova's a company, they have quarterly
18 endings -- March, June, September, December. Like a lot of
19 public companies, they have to answer to where they are at the
20 end of a quarter.

21 So June 30th is coming up, Atlantic Community
22 Bankers Bank has not yet acted in the loan application, Mr.
23 Hartline has a bank, Mr. Levin applies for a loan, and they
24 grant the loan. Rich people get loans all the time.

25 You're going to hear the bank people come in, the

Duncan - Opening Statement

66

1 people from Nova Bank, the Chairman of Nova Bank, they're
2 going to come in and tell you we loan money to rich people all
3 the time. It's really a good deal. It's a great investment.
4 Nothing unusual, nothing criminal about it.

5 Sean, could you give me the next date, please?

6 The June 10th, that purchase program, they vote on
7 it on June 10th but nothing to Mr. Bekkedam.

8 Next one, please?

9 June 30th, the Levin loan, end of the -- end of the
10 quarter, Change in Control application also going in. They're
11 going to put \$18 million into the bank -- George Levin is
12 going to put that \$18 million to the bank.

13 Next one, Sean.

14 July 25th -- 21st, Levin's Change in Control
15 application actually goes to the regulators. That's the first
16 time that goes. It gets sent into them and then what happens?
17 As my kids say, crickets. Nothing. Nothing happens. Nothing
18 happens in late June -- late -- early June -- July, nothing
19 happens in mid July, nothing happens in August until late
20 August.

21 Why? Because everybody is just waiting for the Fed
22 to act on the Change in Control application. Once the Fed
23 acts on the Change in Control application, George can put the
24 money in. What else are they waiting for? The TARP, TARP
25 still hasn't decided. We know -- next one, Sean, please -- we

Duncan - Opening Statement

67

1 know TARP doesn't even act for another month, so everyone's
2 just waiting.

3 That's all they're doing. And what you're going to
4 hear about Barry Bekkedam -- crickets. Nothing. Barry's not
5 involved in any of this, they're not raising money right now.
6 That's not what Barry's -- Barry doesn't have anything to do
7 with these bankers.

8 A JUROR: Can I --

9 THE COURT: I'm sorry, it would have to be directly
10 funneled through me and then I would have to decide. Would
11 you write it down, please? And, counsel, I would suggest that
12 you apprise the jury of each of the acronym's meanings,
13 because we have at least three there.

14 MR. DUNCAN: Okay. I'm going to -- I'm going to
15 forget the first one. ACCB -- so that's Atlantic Community
16 Bankers Bank. CPP -- Capital Purchase Program, that's what
17 that one is. Levin's CIC -- Change in Control.

18 THE COURT: Counsel, just one second, please.

19 (Pause in proceedings)

20 MR. DUNCAN: I'm sorry to get a drink. I get a
21 little dry when I talk.

22 Okay, so now what happens? You're going to know
23 what's going to happen, it's August 25th, TARP's approved it,
24 money's got to be raised. What's going to happen? You're
25 going to hear about Barry Bekkedam again because money needs

Duncan - Opening Statement

68

1 to be raised and that's what Barry does.

2 You're going to see in evidence what Barry does, and
3 you're also going to see what Barry knows about bank
4 regulations and bank regulators and what needs to be done with
5 TARP. On August 29th, 2009 Brian Hartline writes a detailed
6 -- lots of things -- a detailed description to Ed
7 DiMarcantonio, that's the Chairman of Nova Bank, and Barry
8 Bekkedam, who's going to be raising funds, saying this is what
9 we need to do in order to meet the TARP program.

10 Everything above board, everything right out in the
11 open. This is what Barry Bekkedam says. You'll see what he
12 says, it's written right here. In response to Brian
13 Hartline's detailed explanation, Barry is asking Brian a lot
14 of questions -- what, what's this all about? He's essentially
15 clueless about what's going on with the TARP regulations. In
16 his response to Brian Hartline, and it's quite literally --
17 it's right here in the document -- "Wow." He didn't know. He
18 didn't know anything about this.

19 This is evidence. You're going to see this
20 evidence, ladies and gentlemen. There's no conspiracy if
21 there's no agreement and how can there be a conspiracy if
22 Barry doesn't even know what's going on? "Wow" indeed.

23 All through September, nothing much going on,
24 they're still waiting for Fed to make a decision on the Change
25 in Control application, Barry's out there doing what Barry

Duncan - Opening Statement

69

1 does, raising money, working for his clients. You heard about
2 Anthony Bonomo.

3 And I -- I'm sorry if I'm trying your patience but
4 you need to hear this. This is very important, who is Anthony
5 Bonomo? He's not just some guy off the street. Anthony
6 Bonomo was Barry's biggest client. Going to hear a lot about
7 Mr. Bonomo and you're probably going to hear him testify.

8 Mr. Bonomo owned a medical insurance company of New
9 York in the mid 2000s, 2003, 2004. He actually worked there
10 but he wanted to own it so who does he come to see? His
11 financial advisor, the guy who raises money. Mr. Bonomo wants
12 to buy that company so where does he go? He goes to Barry
13 because Barry knows how to raise money.

14 The company is called PRI, Professional Response
15 Insurance -- I'm sorry, Your Honor, something like that.
16 You'll hear it in testimony. Barry helps him raise \$40
17 million -- 40 million, that's a lot -- to buy the company.
18 Mr. Bonomo buys the company. Mr. Bonomo already had a lot of
19 money but now he has a real lot of money.

20 And you're going to hear the testimony that Anthony
21 Bonomo, in addition to being Barry's very good friend, his
22 best client, his company then with all their money comes into
23 -- one of Barry's clients. What does Barry do? He advises
24 his clients on how to make money.

25 So around October, 2009 Barry calls Anthony Bonomo,

Duncan - Opening Statement

70

1 his good friend and client and says hey, I've got this great
2 deal, this guy, George Levin's got this great deal down in
3 Florida, this Banyon thing, a lot of my clients are getting
4 into it, Anthony, you should get into it, and you're going to
5 hear that Anthony Bonomo agrees to that.

6 And why does Anthony Bonomo agree to that? Because
7 he's -- Barry's already make him rich. He wants to be richer.
8 Barry's recommending something so he says invest in Banyon.
9 And you're going to see this -- Mr. Bonomo, just like George
10 Levin, doesn't want to use his own money. He's got his money
11 tied up in wealth. He needs a loan.

12 So Barry says hey, rich guy -- Anthony Bonomo
13 already has his mortgage at Nova Bank, he already owns shares
14 in Nova Bank, he knows Nova Bank. Why don't you go to Nova
15 Bank and see if we can get you a loan there? A rich person
16 goes to a bank, he gets a loan. No surprise. He gets it at
17 4.5 million instead of 5 because he already has some other
18 loans from Nova, that mortgage and other stuff, so he can't
19 get the full 5.

20 But all he's being asked to do by Barry is invest in
21 the Banyon Income Fund, and Mr. Bonomo agrees to that.

22 Sean, next one, please. Okay now skip October 19th.
23 I'll come back to that in just a moment.

24 So on October 21st -- actually 22nd, Anthony Bonomo
25 gets a \$4.5 million loan. He doesn't invest it in Nova

Duncan - Opening Statement

71

1 because that's not what Barry told him to do. He said he
2 invested it in Banyon. And you'll see, he's got a signed
3 letter. He says send \$2 million to Banyon. Where does the
4 other \$2.5 million go?

5 Right in Anthony's bank account. Mr. Egan told you,
6 it's his money, he can do whatever he wants with it. It's a
7 loan. You get a loan, you have an obligation to pay it back,
8 but you can do with that loan whatever you want once it's in
9 your bank account, and that's what Anthony Bonomo does.

10 Barry also tells him after that, hey, what are you
11 going to do with that 2.5? Why don't you invest in Nova?
12 Nova's about to get this big investment from George Levin,
13 this \$13 million to complete his \$18 million subscription
14 agreement. Nova's going to take off, why don't you put some
15 money in there? You already have some money in there,
16 Anthony, put some more in there, and Anthony agrees. And
17 you'll see that.

18 Sean, please?

19 Anthony Bonomo does the same thing George Levin
20 does, he signs a subscription agreement, a legally binding
21 document to invest the money. There's no conspiracy. There's
22 nothing hiding here. Barry's doing what Barry's doing, he's a
23 advising his clients about how to invest money.

24 And what's really interesting is the Government says
25 -- the Government says well, Mr. Bonomo got fooled by Barry

Duncan - Opening Statement

72

1 because Barry didn't tell him that a rich guy got a loan to
2 invest in a bank, which is exactly what Anthony Bonomo's
3 doing. Why would Barry think Anthony Bonomo needs to know
4 that rich guys get loans to invest in things? Anthony
5 Bonomo's doing it too.

6 The Government says Mr. Bekkedam defrauded one of
7 his best friends and his biggest clients. It makes no sense.
8 Remember what the Judge said to you -- common sense. It makes
9 no sense. Why would you do that? He didn't. Mr. Bonomo knew
10 what he was doing at every step of the way and Mr. Bekkedam
11 didn't deceive him in any way, shape or form. Wait until you
12 hear what Mr. Bonomo has to say.

13 Okay, skipped over one and I'll get -- I'm almost
14 done. October 19th the Change in Control gets approved.
15 That's the Fed comes in and says, George Levin, you're good to
16 go, put your \$13 million in. And then there's some back and
17 forth. It's now late October. And what do we know from what
18 Mr. Egan -- what Mr. Ignall told us?

19 On Halloween, October 35th -- 31st, for reasons that
20 really don't really apply to this case but at this point is
21 relevant, something goes wrong with George Levin's big
22 investments down in Florida and he's not going to be able to
23 meet his subscription agreement so George Levin is off the
24 board.

25 They've still got to raise the money though if

Duncan - Opening Statement

73

1 they're going to meet the TARP contingency. They're raising
2 some money but they need to raise more money. You need to
3 raise money, who do you go to? Barry Bekkedam.

4 Barry Bekkedam, who has been the biggest fundraiser
5 for Nova for years, never took a dime, did it because it
6 helped his clients and because he cared about the bank, never
7 took a dime, he's going to raise these funds, he asked -- I
8 think you should pay me.

9 Nova's going to have to pay somebody to help raise
10 these funds because Nova's got to meet this TARP contingency
11 and the deadline is growing short. So he wants someone to
12 help him, Barry agrees to do it and that's all it is.
13 Completely above board. Approved by the bank.

14 Barry's getting paid to do what Barry does, raise
15 funds. He did it for free for a number of years, he's not
16 going to do it for free this time. I don't have to go into
17 this. Mr. Ignall's told you about it, Mr. Egan's told you
18 about it.

19 One more, Sean.

20 So on December 18th -- Pat and I may disagree about
21 this, I think it's December 18th and he thinks it's December
22 15th, it doesn't matter, it's sometime in December -- TARP
23 gets denied, and that's it. TARP gets denied, the fund-
24 raising is done, you don't hear anything more about Barry
25 Bekkedam, except for one small thing, which I'll get to in

1 just a second.

2 Mr. Ignall said Barry Bekkedam was involved in the
3 Charles Gallub loan, which as Mr. Egan tells you, happens
4 after TARP gets denied. They will not be able to prove that
5 because it's false.

6 There's not one shred of evidence, not one fact,
7 nothing to show that Barry Bekkedam was in any way involved in
8 the Gallub loan because they don't need to raise money. It's
9 after the TARP deadline. If they're not raising money,
10 Barry's not involved.

11 That last little thing and I'm almost done. Todd
12 Howard. Okay, you're going to hear from Todd Howard. Who's
13 Todd Howard? Todd Howard was someone Barry hired to help him.
14 Todd Howard, he made some claims about what he could do and
15 you'll hear about that, so Barry hires him. I've got a job,
16 you have a job, even the Judge has a job. What do you do when
17 you have a job? You answer to your boss. You don't go tell
18 your boss what to do.

19 So what happens? Mr. Ignall tells you it's part of
20 the coverup. Todd Howard goes to Barry Bekkedam, his boss,
21 and says hey -- and what you didn't hear, as Mr. Egan told you
22 -- or Mr. Ignall -- Todd Howard finds out Brian Hartline made
23 the loan to George Levin from Brian Hartline. Coverup? What
24 coverup?

25 Barry's supposedly now involved in this coverup,

Duncan - Opening Statement

75

1 according to the Government. His employee goes to him and
2 says Barry, I'm -- I don't know what -- what happened?
3 Barry's not a banker, he's not a lawyer. What does Barry do?
4 You'll hear he tells Todd Howard, hey Todd, we've got this
5 lawyer in the company, Larry Roven, go talk to Larry. Go talk
6 to Brian.

7 I don't know about banking, I don't know about law.
8 That's somebody else. Coverup to send your employee to the
9 lawyer, you're sending your employee to the banker who the
10 banker is going to have to pay another lawyer to give an
11 opinion? This is the coverup that Barry's supposedly involved
12 in?

13 He doesn't shut down Todd Howard and say, Todd, you
14 work for me. We're not talking about coverup. No, go figure
15 it out, go talk to people and make yourself satisfied. You're
16 going to hear from Todd Howard. You determine whether this is
17 any sort of coverup. Barry's not concealing anything. Okay,
18 other coverup, the David Schwarz letter -- Mr. Egan talked to
19 you about that. KPMG, the auditor, EITF 85-1, whatever that
20 is.

21 You won't hear a word about Barry Bekkedam involved
22 in that because that's not what Barry Bekkedam does. He's not
23 involved in banking, he's not involved in accounting, he's not
24 involved in any of that. EITF 85-1? I'm not sure Barry could
25 spell it let alone know what it is because he's not involved.

Duncan - Opening Statement

76

1 And what happens after 2010, after everything's
2 done? We know it, it's all over on December 18th, so what
3 happens in 2010 about Barry Bekkedam? Nothing. 2011?
4 Nothing. 12, 13, 14? Nothing.

5 Finally in late October, 2014 the Government brings
6 these charges and now more than six years after Nova applied
7 for TARP, and five years after all the facts were known to
8 everybody -- you heard about KPMG, they knew about everything
9 and they've told everybody about everything, all the facts
10 were known to the Government but we're still here today.

11 But as the evidence is going to show you, the
12 Government has got it all wrong because the intent matters.
13 What Barry thought matters. The facts -- those facts are
14 stubborn things. Ask the Government how they're going to
15 prove this if the facts don't match what they say happened.
16 No Government dollars were lost. The Levin loan was legal.
17 The Bonomo loan was legal.

18 Maybe the Gallub loan was legal, I'm not any part of
19 that, I don't know what that's about. No Government dollars
20 were lost. No crimes were committed. And Barry Bekkedam
21 never intended by not telling somebody that rich guys got
22 loans to conceal anything or to deceive anyone or to defraud
23 anyone. There's no evidence of it.

24 After you've heard all this evidence, ladies and
25 gentlemen, we're going to ask you to return the only verdicts

1 consistent and supported by this evidence and the absence of
2 evidence. Using your common sense, we ask you to return
3 verdicts of not guilty on every count. Thank you.

4 (This concludes the requested opening statements at
5 11:57 a.m.)

6 * * *

7 C E R T I F I C A T I O N

8 We, Roxanne Galanti, Maureen Emmons and Diane
9 Gallagher, the court approved transcribers, certify that the
10 foregoing is a correct transcript from the official
11 electronic sound recording of the proceedings in the above-
12 entitled matter.

13 **Roxanne Galanti**

Digitally signed by Roxanne Galanti
DN: cn=Roxanne Galanti, o, ou,
email=dianadoman@comcast.net, c=US
Date: 2016.05.05 10:21:14 -04'00'

14
15 ROXANNE GALANTI

16 **Maureen
Emmons**

Digitally signed by Maureen Emmons
DN: cn=Maureen Emmons, o, ou,
email=dianadoman@comcast.net, c=US
Date: 2016.05.05 10:21:28 -04'00'

17
18 MAUREEN EMMONS

19 **Diane
Gallagher**

Digitally signed by Diane Gallagher
DN: cn=Diane Gallagher, o, ou,
email=dianadoman@comcast.net,
c=US
Date: 2016.05.05 10:21:42 -04'00'

March 29, 2016

20
21 DIANE GALLAGHER

DATE

22 DIANA DOMAN TRANSCRIBING, LLC
23
24
25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	14-CR-0548
)	
vs.)	
)	
BRIAN HARTLINE and)	
BARRY BEKKEDAM,	)	Philadelphia, PA
	)	March 29, 2016
Defendants.	)	11:57 a.m.

TRANSCRIPT OF TRIAL TESTIMONY (DAY 1)
BEFORE THE HONORABLE C. DARNELL JONES, II and JURY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	DAVID J. IGNALL, ESQUIRE JENNIFER CHUN BARRY, ESQUIRE ASSISTANT UNITED STATES ATTORNEYS UNITED STATES ATTORNEY'S OFFICE 615 Chestnut Street, Suite 1250 Philadelphia, PA 19106
For the Defendant Brian Hartline:	PATRICK J. EGAN, ESQUIRE FOX ROTHSCHILD LLP 2000 Market Street, 10th Floor Philadelphia, PA 19107
For the Defendant Barry Bekkedam:	MICHAEL J. ENGLE, ESQUIRE GREENBLATT, PIERCE, ENGLE, FUNT & FLORES 123 South Broad Street, Suite 2500 Philadelphia, PA 19109
	RUSSELL D. DUNCAN, ESQUIRE SHULMAN, ROGERS, GANDAL, PORDY & ECKER, PA 12505 Park Potomac Avenue Potomac, MD 20854
	JOEL D. SCHWARTZ, ESQUIRE SHULMAN ROGERS GANDAL PORDY ECKER 12505 Park Potomac Avenue, 6th Floor Potomac, MD 20854
Audio Operator:	CARL HAUGER

Transcribed by: DIANA DOMAN TRANSCRIBING, LLC
P.O. Box 129
Gibbsboro, NJ 08026
Office: (856) 435-7172
Fax: (856) 435-7124
E-mail: dianadoman@comcast.net

Proceedings recorded by electronic sound recording; transcript
produced by transcription service

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-------------------	---------------	--------------	-----------------	----------------

FOR THE GOVERNMENT:

Theodore Schaffner	33 (Bar)	41 (Ega)	77 (Bar)	
--------------------	----------	----------	----------	--

68 (Dun)

Kevin Bertsch	82 (Ign)	96 (Ega)	120 (Ign)	
---------------	----------	----------	-----------	--

118 (Dun)

121 (Ega) 129 (Ign)

EXHIBITS:I.D.RECEIVED

G-30 Voting Sheet, Nova Bank		38	39
------------------------------	--	----	----

G-75 Preliminary Approval Letter		41	42
----------------------------------	--	----	----

G-6 Application for TARP CPP		47	48
------------------------------	--	----	----

G-142 Recordation of Telephone Conversation		61	81
---	--	----	----

G-155 TARP Case Memo		64	81
----------------------	--	----	----

G-34 Letter, 6/17/09, from FRB		104	---
--------------------------------	--	-----	-----

G-139 E-mail, 12/14/09 from Course		109	110
------------------------------------	--	-----	-----

G-150 E-mail, Course to Bertsch		112	112
---------------------------------	--	-----	-----

G-16 Recordation of Meeting		120	---
-----------------------------	--	-----	-----

1 (The following portion of trial testimony was heard in
2 open court at 11:57 a.m.)

3 THE COURT: All right. Now, your question. Do you
4 still wish me to consider what you've written to me?

5 JUROR: Yes, please.

6 THE COURT: All right. Now, I'm not certain exactly
7 what it was that you meant. Could you be more specific in
8 drafting it, please?

9 JUROR: Write -- write it out --

10 THE COURT: Please.

11 JUROR: -- for you.

12 THE COURT: Thank you. Take your time.

13 (Pause)

14 THE COURT: Thank you.

15 Counsel, may I see you, please.

16 (Sidebar begins)

17 THE COURT: Okay. For the record the question is,
18 is the list of dates supposed to be chronological, and then
19 she recorded May 27, 2009, June 10, 2009, June 30, 2010 with a
20 question mark, July 21, 2010 with a question mark, August 25,
21 2009, and then she says all the rest of the dates are 2009.

22 UNIDENTIFIED ATTORNEY: It's a -- it's a typo in the
23 recitation.

24 MS. BARRY: It's a typo, Your Honor.

25 UNIDENTIFIED ATTORNEY: I didn't even notice it. I

1 guess it was supposed to be 2009.

2 THE COURT: Okay. That's all I need to know.

3 Now, I have listed this as Juror Number 9, March 29,
4 2016, noon, Jury Exhibit Number 2 -- Juror Exhibit Number 2.
5 The other one, which I didn't understand, was Juror Exhibit
6 Number 1 that wasn't as specific as this. Okay. That'll be
7 incorporated into the record.

8 The rule simply applies the juror a response to her
9 question.

10 UNIDENTIFIED ATTORNEY: And also, may reiterate that
11 it's not evidence in any event.

12 THE COURT: Oh, absolutely.

13 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

14 THE COURT: Thank you.

15 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

16 (Sidebar ends)

17 THE COURT: The inquiry was simply whether or not
18 the dates that were on the PowerPoint slide were to be
19 chronological. The answer is it was a typo. All right.

20 Now we're going to recess for lunch, but the Court's
21 admonitions continue, one, in terms of the statements of
22 counsel, and these opening statements are not evidence,
23 notwithstanding what was put on the slides. It's still not
24 evidence. The evidence has to come from the witness stand
25 once we start the actual trial of the case in terms of

Colloquy

6

1 evidence presented.

2 Two, also, as I mentioned at the outset several
3 weeks ago, please do not affronted -- be affronted if you
4 should run into us around the building or in the hallway and
5 we turn and walk the other day. We simply are not allowed to
6 have any contact with the jury whatsoever. We, meaning the
7 Court, the counsel, the witnesses and people who are directly
8 involved in this case.

9 We are going to restrict this floor for restroom use
10 by the jury. Everyone else who is involved in the case, the
11 witnesses, counsel, everyone else will go to other floors. So
12 if you would please restrict yourselves to the restrooms on
13 this floor, we won't have any kind of incident or run ins or
14 things like that.

15 We're going to recess at this time until 1:20 this
16 afternoon, 1:20 this afternoon.

17 Please do not discuss the opening statements or
18 anything about the case. Enjoy your lunch. We'll see you at
19 1:20 this afternoon right back here.

20 All rise.

21 (Jury out, 12:01 p.m.)

22 THE COURT: All right. You're excused. Thank you.

23 ALL ATTORNEYS: Thank you, Your Honor.

24 MR. IGNALL: Well, Your Honor --

25 THE COURT: Yes, sir.

Colloquy

7

1 MR. IGNALL: There -- there's one issue I'd like to
2 raise before our first two witnesses --

3 THE COURT: Yes, sir.

4 MR. IGNALL: -- come up.

5 It came up in Mr. Egan's opening where he mentioned
6 something about CitiBank, Wells Fargo and bank being too big
7 to fail and treated differently.

8 I was under the impression that the Court had
9 already ruled that that type of evidence was not admissible.
10 I understand from Mr. Egan that he would like to inquire with
11 the Government's first witnesses about that. So I think we
12 need to raise that before those witnesses testify.

13 THE COURT: Could -- could you refresh my
14 recollection as to the specific motion and order wherein I did
15 that?

16 MR. IGNALL: I will dig through -- it's a
17 Government's motion in limine, and I believe it was -- may
18 have been at the last hearing where I thought there was an
19 agreement -- or at least the Court, because I -- it was at the
20 last hearing, the Government's motion in limine was that it's
21 inappropriate to use some sort of blame the victim or that
22 this is a bad program.

23 At the last --

24 THE COURT: I recall that, but my recollection about
25 that, while it's directed at a specific lack of inquiry by the

Colloquy

8

1 regulators and that there was no obligation on the part of the
2 defendants to come forward with the information and not being
3 able to argue the lack of -- the fact that it wasn't asked
4 didn't mean that they weren't culpable.

5 MR. IGNALL: Yes, I understand that was the -- but
6 it's all part of the blame the victim was effectively what we
7 were arguing, and I may have misunderstood.

8 If I did, I'm not sure if the Court has ruled
9 specifically then about whether it's appropriate to say that
10 Nova Bank was treated differently from other banks, because I
11 don't think that's relevant.

12 THE COURT: I don't recall it, but, again, look at
13 the record and give me some specifics as to exactly what
14 presumably the Government's motion was.

15 MR. IGNALL: I can -- I can find the motion, and I
16 believe --

17 THE COURT: And I can tell you what the ruling was.

18 MR. IGNALL: -- and I believe the resolution was at
19 the last hearing. I don't believe we have a transcript from
20 the last hearing. So I'm not sure I'm going to be able to
21 point the Court to a transcript.

22 THE COURT: Well, at least bring up the -- the
23 motion.

24 MR. IGNALL: Okay.

25 THE COURT: All right.

Colloquy

9

1 MR. IGNALL: I can do it. One moment, Your Honor.

2 THE COURT: And I'll review my notes about it.

3 MR. EGAN: And, Your Honor, I can respond at that
4 point, but the fact is that the CPP program did have two sides
5 to it. One involved large banks; one involved small banks.
6 It's a fact, not a question of blaming the victim. It's an
7 important fact for the jury to understand the way things took
8 place.

9 THE COURT: Well, let me just stop you there. I
10 don't recall in the context of blaming the victim that there
11 was any exclusion of being able to argue that the banks were
12 treated differently.

13 I specifically recall you arguing that at some point
14 in this pretrial process, but I don't think it was in the form
15 of a motion to bar him from saying that. It was just part of
16 his presentation to the Court.

17 MR. EGAN: Correct, Your Honor. It was in our
18 motion to dismiss.

19 THE COURT: Which was denied by the Court.

20 MR. IGNALL: Yes, and then we -- and we responded
21 that anything that was part of the motion to dismiss should
22 not be before the jury, that if there's -- this is a bad --

23 THE COURT: That's pretty broad. I don't --

24 MR. IGNALL: Well, no, no. The -- the -- that
25 there's some misconduct, that this is a bad Government

Colloquy

10

1 program, and, therefore, you can't defraud a bad program
2 because big banks just got the money, small banks had to go
3 through these hoops. I think this goes --

4 THE COURT: All right. Let's just do this. Find
5 exactly the motion --

6 MR. IGNALL: Okay.

7 THE COURT: -- and we'll address it. Let's come
8 back about -- in one hour.

9 MR. IGNALL: Okay.

10 THE COURT: Ten after.

11 MR. IGNALL: That'd be great. Thank you, Your
12 Honor.

13 MR. EGAN: Thank you, Your Honor.

14 THE COURT: Okay. Thank you.

15 (Luncheon recess taken, 12:05 p.m. to 1:10 p.m.)

AFTERNOON SESSION

16
17 THE COURT: Mr. Ignall, did you find what it was --

18 MR. IGNALL: I think we did.

19 THE COURT: -- we were referring to?

20 MR. IGNALL: And if I may approach the podium, I'll
21 try and address what I found.

22 MR. DUNCAN: Your Honor, may I -- may I be excused
23 for a moment? I'm not involved in this.

24 THE COURT: Yes, sir.

25 MR. DUNCAN: Mr. Engle's here.

Colloquy

11

1 THE COURT: Surely.

2 MR. IGNALL: Your Honor, it looks like the motion,
3 better yet, the memorandum is what we initially filed on
4 October 25th. It's --

5 THE COURT: Give Mr. -- I apologize, Counsel. I'd
6 looked up, and I didn't notice that you weren't there. I
7 apologize.

8 MS. BARRY: It's all right.

9 UNIDENTIFIED ATTORNEY: Beg your pardon.

10 THE COURT: Yes, sir. I'm sorry.

11 MR. IGNALL: It looks like we first raised this in a
12 memorandum and docket, item 94, on October 26th we raised it.
13 We mentioned it again in Docket Number 131 on February 23rd in
14 a footnote. And then I've just looked through the transcript
15 and thank Mr. Schwartz for helping me find the page. I have
16 to find the transcript, oh, here it is, from the March 7th
17 hearing. I think the Court did address it there, and I
18 believe it's at page 180 through 181.

19 And here, Mr. Egan says, "What should be considered
20 fair game is that we know from internal documents the decision
21 to give money to banks the size of Nova, decision had been
22 made not to give money to banks the size of Nova quite some
23 time before Nova got its rejection notice."

24 And he earlier talked about different tiers of
25 banks.

Colloquy

12

1 And then I said, "That's exactly the kind of thing
2 we're trying to exclude is evidence that has nothing to do
3 with this case, that his is a bad program. They weren't going
4 to give them the money, anyway."

5 And the Court said, "I agree with that."

6 So I think we did address it in that context.

7 THE COURT: In terms of relevancy.

8 MR. IGNALL: Yes.

9 THE COURT: And Mr. Egan in his statement made or --
10 yes.

11 MR. IGNALL: Yeah, my -- my concern was that this
12 goes to more of a jury nullification argument that banks like
13 Nova weren't treated fairly by the Treasury.

14 THE COURT: Understood.

15 MR. IGNALL: So.

16 THE COURT: Ergo, if you let the CitiBanks of the
17 world get away with it, why would you not let our client get
18 away with it or something to that effect.

19 MR. IGNALL: It could be or just that, you know, big
20 banks got treated better than little banks.

21 THE COURT: Mr. Egan.

22 MR. EGAN: Those are two entirely different issues,
23 Your Honor. Number one, I would not argue, did not argue and
24 have no intention of arguing that this is a bad program
25 because of the way they treated two different types of banks.

1 But as a factual matter they did treat the two
2 different bank types differently, and it's an important and
3 relevant fact of the case. Because what happens in the case
4 is Nova's application is in October, they take no action on it
5 until April. And the reason they take no action on it until
6 April is because, not that it's anything negative or some
7 inference that there's something bad about the program, they
8 dealt with the big banks first. And they dealt with the big
9 banks under a different standard.

10 I'm not going to argue that the fact that they had
11 dealt with the big banks under a different standard means that
12 the standard they applied to Nova is somehow bad or wrong.
13 It's just a fact that the jury needs to know as to what
14 happened between October and April, number one.

15 Number two, it is a fact, and it's not -- it's one
16 thing to say we can't blame the victim. I'm certainly not
17 going to get up in argument and say it's -- it's TARP's fault,
18 and they didn't, you know, that this -- my client is sitting
19 here. That's not what this is about at all.

20 It's just the fact, and it's as plain as the fact
21 that, you know, whether it's sun shining out today or not.
22 It's absolutely relevant and material.

23 MR. SCHWARTZ: Can Mr. Bekkedam be heard on this,
24 Your Honor?

25 THE COURT: Surely.

Colloquy

14

1 MR. SCHWARTZ: Thank you, sir. Your Honor, I
2 started this mess back in October so just want to make sure.

3 The situation is this. Your Honor, during that
4 hearing on March 7, said you can't blame the regulators for
5 mistakes they made, but we can ask the regulators if there was
6 a checklist made.

7 And if we can establish through the regulators that
8 there was no checklist and there was no rules because
9 everybody was treating -- treated differently, that means that
10 there's nothing material that they could have said. And if
11 there's nothing material, there can't be material falsehoods,
12 and that's why this is fair game.

13 It's not to blame, you know, the Secretary of the
14 Treasury or how it was run. It's a fact. The fact is there
15 were no rules. If there were no rules, no statements could be
16 material. There could be no material omissions or falsehoods.
17 That's the purpose for introducing that evidence or producing
18 evidence.

19 THE COURT: All right. Mr. Ignall.

20 MR. IGNALL: I think those are two different things.
21 In terms -- if Mr. Egan can elicit from a witness that there
22 is a reason that the Treasury didn't act on the application
23 for six months, that's fine, insofar as the jury might be
24 wondering. I think that's fine.

25 But in terms of there's a different standard applied

1 to big banks versus small banks, I don't see what that gets
2 to, other than the inference that Nova was somehow treated
3 unfairly.

4 THE COURT: All right. I think that it would be
5 relevant in terms of the disparity and treatment, if you will,
6 if, for example, Nova's personnel relied on information that
7 was not given by the big banks, assuming that the big banks
8 were not in trouble as a result of not giving that
9 information. So Nova gave the same kind of information or did
10 not give the same kind of information, and, therefore, there's
11 a problem with what Nova did. They would be arguing as a
12 defense, we relied on what we saw going on.

13 MR. IGNALL: Well, it --

14 THE COURT: That's not -- then that would be
15 relevant. I don't see that that's the situation here because
16 there's no evidence I've heard thus far or arguments thus far
17 that there was the kind of reliance on actions by the -- the
18 TARP personnel toward the big banks by Nova.

19 On the other hand, as counsel has indicated, the
20 delay is a fact, and there can be no objection to that because
21 it's in fact presumably what occurred.

22 Short of that, it would require the Court giving a
23 limiting instruction as to the evidence.

24 Now, first of all, let me back up a second as I've
25 discussed earlier, it is a fact, but by the same token there

1 was no objection when Mr Egan said it at the time, unlike
2 something else had happened with Mr. Duncan's PowerPoint
3 presentation.

4 So to that extent, quote, unquote, the cat's out of
5 the bag, no harm no foul. It's just moving along with a lot
6 of other minutiae, frankly, that the jury heard this morning
7 in all of the opening statements that were given combined, not
8 that there's no substance to it, but it was a lot of
9 information.

10 So here we are now. Counsel is indicating that he's
11 not going to use the information or -- or even ask the
12 questions in such a way that they would elicit either jury
13 nullification or any other irrelevant basis for its
14 introduction.

15 MR. IGNALL: If -- if that's the case, then I have
16 no objection. I generally don't like to object during opening
17 statements.

18 THE COURT: But you did with Mr. Duncan.

19 MR. IGNALL: I did just because perhaps we didn't
20 have quite the same meeting of the minds as I understood about
21 what we're using, but in terms of something that came up. I
22 am only raising it because Mr. Egan raised it in opening. I
23 have a concern that it was going to come up with the first two
24 witnesses who were going to take the stand today.

25 THE COURT: And -- and appropriately right, no

Colloquy

17

1 question about it. But what I'm suggesting is I cannot go
2 back now --

3 MR. IGNALL: Oh --

4 THE COURT: -- and unring that bell.

5 MR. IGNALL: And I -- I'm not asking the Court to do
6 that.

7 THE COURT: All right.

8 Now, Mr. Egan.

9 MR. EGAN: I intend to ask the first witness about
10 the fact that the program started in October, and that between
11 October and April, when they finally got around to doing
12 anything with Nova's application, they were busy dealing --
13 yeah, he was hang -- flying around during my opening -- they
14 were dealing with the bigger banks, and that when they were
15 dealing with the bigger banks, they applied a standard to the
16 bigger banks that was not the same that they applied to the
17 smaller banks. That's it. No further.

18 THE COURT: If the application of a different
19 standard would cause the time to elongate, that's relevant,
20 conceivably, and probative. But just to say it for the jury
21 to hear it and opine erroneously that there is this disparate
22 treatment which requires a nullification verdict herein
23 because of that disparate treatment, I don't -- I think that's
24 what Mr. Ignall is -- is arguing against.

25 MR. EGAN: I can get that he -- he's -- says I

Colloquy

18

1 should not argue for that, and I understand. I'm not going to
2 argue with that.

3 But the fact is we haven't even heard any of this
4 evidence yet, and there's very likely to become material what
5 they ask which person because one of the problems is --

6 THE COURT: Which is person versus -- in terms of --

7 MR. EGAN: A big bank versus small bank.

8 THE COURT: All right. Go ahead.

9 MR. EGAN: Because one of the problems is they
10 didn't communicate. We have all these communications between
11 these regulators. The vast majority of them never got
12 communicated over to Nova.

13 The Government is implying that Nova knew all of
14 these things, but when you look at the documents, it's pretty
15 obvious they never got told, and that's all part of this
16 process. And it's clearly relevant and will handcuff the
17 defense if we're not able to go into that issue.

18 I don't plan to dwell on it. It's just a fact. I'm
19 going to cover it. But I'm not going to argue that it means
20 it's a bad program or they were treating Nova unfairly.
21 That's -- I'm just -- it's a fact.

22 THE COURT: How is it relevant?

23 MR. EGAN: It's relevant because Nova didn't know
24 what the Government wanted from them, the very reason Your
25 Honor stated.

Colloquy

19

1 THE COURT: And is the lack of knowledge because
2 everyone was treated by the same standard of lack of
3 information, or is it because the big banks received
4 information that Nova did not?

5 MR. EGAN: It's because everybody was hearing
6 different things from everybody else in the community, and
7 nobody knew exactly what the deal was.

8 THE COURT: Is there someone from the big bank?

9 MR. EGAN: There's someone from Nova Bank who will
10 testify to that, and the Government's going to call them.

11 THE COURT: Well, no. But in terms of -- of what
12 happened in the big banks, that would be hearsay. Is -- is
13 someone from the big bank to be here?

14 Lord, this thing is getting me.

15 MR. EGAN: In terms of what Nova's understanding of
16 what was being asked and what the -- how the TARP was being
17 applied, there will be relevant testimony from Government
18 witnesses who are at Nova as to confusion and -- and lack of
19 understanding of what's being asked of them.

20 And that -- part of that big picture includes the
21 fact that big banks didn't get asked anything, got given all
22 this money, and now here we are, we're getting asked all these
23 questions, what do they want -- really want to know, and
24 that's --

25 THE COURT: Again, I understand what you're saying

Colloquy

20

1 but I've got a problem with it because I see no reliance by
2 Nova and, quote, unquote, "the small banks" upon the
3 information that was either given to or withheld from the big
4 banks.

5 MR. EGAN: Well, Your Honor, that's because we
6 haven't heard all the evidence. Your Honor, you're being
7 asked to rule in a vacuum, and we're being -- we're basically
8 being handcuffed by this -- by this request. And I -- and I
9 think it's inappropriate under these circumstances. Want to
10 talk about no reliance, we've got a situation with the
11 Government, no reliance on any of the things that are
12 allegedly a crime.

13 So I mean, really.

14 THE COURT: Let me hear from Mr. Ignall one more
15 time.

16 MR. IGNALL: If Mr. Egan can elicit information from
17 someone at Nova about what Mr. Hartline understood or didn't
18 understand about what the Treasury wanted, totally relevant.

19 THE COURT: Including, for example, if that
20 information that was to -- brought to Mr. Hartline's attention
21 came from the quote, unquote, "big banks"?

22 MR. IGNALL: It -- whatever source it comes from, if
23 it goes to Mr. Hartline's intent, I think that's relevant.

24 THE COURT: That's what I'm saying. I think it's
25 admissible for that purpose.

Colloquy

21

1 My problem is, is that in a vacuum, as you're
2 suggesting, without having any ability to link it up by just
3 simply saying, hey, these guys were treated unfairly because
4 these guys got more information, that in of itself is not
5 really relevant to the question in this case as to whether or
6 not there's culpability by reason of violation of a statute.
7 That's all I'm saying.

8 MR. EGAN: And I would agree that that's improper
9 argument, Your Honor, and I would not --

10 THE COURT: I'm sorry.

11 MR. EGAN: I would agree that that's improper
12 argument, and I would not make that argument.

13 THE COURT: Then fine.

14 MR. IGNALL: But my objection is to questioning the
15 first two Government witnesses about was there a different --
16 and they may -- truth be told, may not actually know the
17 answer, they may, were larger banks treated differently from
18 the way banks of Nova's size were treated?

19 That's what I don't think is relevant to get from
20 the -- these first two witnesses who don't have any connection
21 to Mr. Hartline, telling Mr. Hartline yes, by the way, big
22 banks do this, smaller banks do that.

23 Without that connection I don't think it's
24 appropriate to ask these witnesses.

25 MR. EGAN: Your Honor, he's putting on the head of

Colloquy

22

1 the CPP from Washington, D.C. as his first witness. Am I
2 going to bring him back here after the Government's finished
3 their case so that I can then tie this together?

4 I mean if we're going to do that, we're going to
5 have to recall --

6 THE COURT: All right.

7 MR. EGAN: -- every one of their witnesses.

8 THE COURT: I'm going to do this. I'm going to
9 allow you to conduct your questioning. If, however, you cross
10 that line that I think we are all in agreement that you should
11 not cross, then I'm going to be obliged to give a cautionary
12 instruction to the jury regarding what they can now consider,
13 after it's all said and done, or what they cannot consider
14 after it's all said and done, and I would not want to undercut
15 or undermine your case, but you run that risk if the cat jumps
16 out of the bag inappropriately.

17 MR. EGAN: Understood, Your Honor.

18 THE COURT: All right.

19 MR. EGAN: Thank you.

20 THE COURT: All right.

21 Yes, sir.

22 MR. SCHWARTZ: Just one additional issue if I may.

23 Respectfully, I believe that the Government amended
24 the indictment during its opening statement. It said that the
25 deadline for letting CPPs and TARP know about information --

1 about money that was raised, capital that was raised, was
2 extended beyond October into December. And that may be true,
3 but it's not what's the indictment.

4 We have litigated and moved to exclude any testimony
5 about statements made by the defendants or their proxies to
6 the Government after October 21st because the indictment
7 alleges that the crime was committed by October -- by or
8 before October 21st; therefore, that's all that's admissible.

9 The Government, I think, has responded to our
10 arguments by now saying in its opening statement, well, things
11 got extended into December.

12 That may be true, Your Honor, but that doesn't
13 matter in terms of what my clients and Mr. Hartline are
14 charged with. They're charged with committing a crime by or
15 before October 21st; therefore, by definition, anything after
16 that date is outside of what the indictment says has to be
17 proven.

18 So we would renew our objection, based on this
19 improper amendment of the indictment, to preclude the
20 Government from producing any testimony from its witnesses
21 that either defendant, directly or by their proxies, made
22 statements to the CPP after October 21st.

23 THE COURT: Did you not argue that there was -- it
24 would be permissible to introduce evidence of a continuation
25 of a cover-up?

Colloquy

24

1 MR. IGNALL: But that -- yes, but that's not even
2 the answer to this, Your Honor.

3 THE COURT: All right.

4 MR. IGNALL: Certainly the cover-up, even if it's
5 after the time period of the charged indictment is relevant to
6 consciousness of guilt.

7 But we've been through this a number of times where
8 I'm not really following how counsel's reading the indictment.
9 The indictment is quite clear for the conspiracy between in or
10 about May 2009 and in or about January 2010.

11 Counsel seems to hang their hat on an interim
12 deadline that is one of the allegations in the indictment that
13 when the defendants understood there was an October 21st
14 deadline, there are things they did. The indictment continues
15 to outline conduct that continued through January of 2010.

16 So we've been through this multiple times. I'm not
17 sure why we're going through this again.

18 MR. SCHWARTZ: This is not -- respectfully, sir,
19 this is not about a cover-up. It's nothing introduced for
20 purpose of a cover-up.

21 The crime in the indictment says that they had to
22 say by October 25th -- 21st that we have raised \$15 million or
23 \$10 million. We've met contingency.

24 If they said it by or before October 21st, that's
25 evidence of guilt. If on December 15th they said we met the

Colloquy

25

1 contingency, doesn't matter because it doesn't show they were
2 guilty of -- it doesn't show that they said by or before
3 October 21st. If they said it in 2014, it wouldn't matter.

4 The only way a lie is material, if it's in fact a
5 lie, is if it's done by the time that it has the capacity to
6 affect a decision. And what is said in the indictment? The
7 grand jury decided the deadline for the criminal act was, was
8 October 21st.

9 Did -- did anybody --

10 THE COURT: So what's the January date in the
11 indictment?

12 MR. SCHWARTZ: The -- the January date is the
13 conspiracy itself, but it's not the -- there are at least,
14 first of all, three counts that don't involve the conspiracy,
15 but there's nothing about a statement made in December, hey,
16 we've met the contingency. (Inaudible) Great news. We've
17 met the contingency.

18 That doesn't affect the ability of TARP to grant or
19 not grant the money by October 21st. That's what the grand
20 jury said the crime is.

21 THE COURT: Are you suggesting simply that the dates
22 that go into January affect a different crime but still one
23 that's named in the indictment?

24 MR. SCHWARTZ: I don't think they affect any crime,
25 Your Honor. The only crime that could possibly affect, I

Colloquy

26

1 think the Government believes, is it's showing a consciousness
2 of guilt. It's not a statement made in December. It's not
3 going to affect the consciousness of guilt that a statement I
4 made in -- before October 21st was dishonest.

5 The dishonest statement, if one existed, had to be
6 made to TARP by October 21st and --

7 THE COURT: And this is even though the -- there is
8 argument, for example, from Mr. Egan that the -- they didn't
9 get to them until later on.

10 MR. SCHWARTZ: That is an unfortunate result or
11 consequence of what the Government asked the grand jury to
12 charge. The Government said here's our indictment. We
13 wrote -- remember, it's like a contra -- you know, they the
14 language. They didn't ask the grand jury to write the
15 language. They said do we convince you that these people
16 should be charged with committing a crime by or before October
17 21st?

18 And the grand jury said yeah, go ahead, prosecute
19 them for that. They didn't say go ahead and prosecute them
20 for something they did in December.

21 THE COURT: Give me a second. Let me look at the
22 indictment, please.

23 (Pause)

24 MR. SCHWARTZ: I believe it's paragraph 22, Your
25 Honor.

Colloquy

27

1 THE COURT: I'm sorry?

2 MR. SCHWARTZ: I believe it's paragraph 22, which is
3 unnumbered at -- or maybe I numbered it. It's after -- it
4 says "Bekkedam and Hartline orchestrate other circular
5 transactions to secure TARP money."

6 THE COURT: Let me ask it this way because I'm not
7 following it the way you're directing me at the moment.

8 I'm looking at page four on the indictment. This is
9 document number one, page four of 17. It's headed "The
10 Conspiracy" at the top of the page.

11 Are you with me, Mr. Schwartz?

12 (No audible response)

13 THE COURT: Did you find it, Mr. Schwartz?

14 MR. SCHWARTZ: I'm just -- mine -- mine is printed
15 funny, Your Honor. Sorry. I'm sorry.

16 THE COURT: That's all right.

17 MR. IGNALL: Which paragraph, Your Honor? Which
18 paragraph?

19 THE COURT: This would be number 12 --

20 MR. SCHWARTZ: Let me see what the --

21 THE COURT: -- under the conspiracy. Document one,
22 filed October 2, 2014, page --

23 MR. IGNALL: Got it, Your Honor.

24 THE COURT: -- page four.

25 MR. IGNALL: Yes, sir.

Colloquy

28

1 THE COURT: All right. That under the hearing in
2 bold "The Conspiracy," --

3 MR. SCHWARTZ: Uh-huh.

4 THE COURT: -- item 12.

5 MR. SCHWARTZ: Yes, sir.

6 THE COURT: Between in or about May 2009 and in or
7 about January 2010 it addresses conspiracy.

8 MR. SCHWARTZ: Understood.

9 THE COURT: Now, jumping forward in Count 2 on page
10 11 the grand jury further charges that, and then item two,
11 "Between in or about May 2009 and in or about December 2009 it
12 apprises that the -- each defendant executed a scheme with the
13 intent to defraud."

14 Now, what I'm trying to understand from what you're
15 arguing where in this says that the Government can't do what
16 the Government's trying to do?

17 MR. SCHWARTZ: It's page -- it's paragraph 22, Your
18 Honor, which is page six of the Indictment. I'm sorry --
19 yeah.

20 "The Department of the Treasury" --

21 THE COURT: One second.

22 MR. SCHWARTZ: I beg your pardon.

23 THE COURT: Okay. The bold heading is "Bekkedam and
24 Hartline orchestrate other circular transactions" --

25 MR. SCHWARTZ: Yes.

Colloquy

29

1 THE COURT: -- to the secure TARP money."

2 MR. SCHWARTZ: Yes.

3 THE COURT: And then Item 22, quote, "The Department
4 of the Treasury told Nova it had until October 21, 2009 to
5 raise the money necessary to be eligible to receive the 13.5
6 million in TARP funds. However, by October 21, 2009 Nova
7 still had not raised sufficient capital."

8 MR. SCHWARTZ: Yes, sir. And what I am suggesting,
9 respectfully, Your Honor, is that the lie has to occur -- the
10 lie or omission has to occur by October 21st. It didn't.

11 That's why we moved to dismiss the indictment
12 because it couldn't be proven, but the -- the simple fact is
13 that the grand jury said that -- Treasury said tell us whether
14 you've raised enough capital by October 21st.

15 If they lied about it by or before October 21st,
16 then they could be convicted of making a materially -- a false
17 and material statement.

18 Any statement after October 21st saying we've raised
19 the money, we've raised the money, we've raised the money is
20 past that deadline, and, therefore, with all due respect, it
21 can't be a crime as defined in the Indictment.

22 THE COURT: Now let me hear from Mr. Ignall. Thank
23 you.

24 MR. IGNALL: Thank you, Your Honor.

25 I was not aware we were going to litigate this

1 again, Your Honor, and I don't actually have our response and
2 their original motion to dismiss where they seem to think that
3 paragraph 22 limits the Government to prove so that it can't
4 introduce evidence of things that are in, for example,
5 paragraph 23, paragraph 25, paragraph 26, paragraph 27.

6 The grand jury delineated the time period as going
7 through January 2010 for the conspiracy. The conduct alleged
8 in the indictment go through January 2010 in the conspiracy.

9 Count 2 goes through December of 2009. Count 4
10 takes place on December 15, 2009.

11 I don't understand -- I didn't understand the
12 argument before. I don't understand it now.

13 Yes, the Department of Treasury said we'd like you
14 to raise the money by October 21st, but the evidence will show
15 that the Treasury extended that deadline.

16 THE COURT: And that's the critical point here.

17 MR. IGNALL: It actually -- although it is a
18 critical point, as a matter of law it's not even the critical
19 point.

20 The critical point is did these defendants engage in
21 a scheme or a conspiracy beyond that point, that as we
22 explained, I believe, in our response to the motion to
23 dismiss, even if it were impossible to get the money,
24 impossibility doesn't make it legally impossible to commit the
25 crime.

Colloquy

31

1 THE COURT: All right. Now, what was your request
2 for relief?

3 MR. SCHWARTZ: Your Honor, my request was that the
4 Government not ask its -- adduce evidence from Government
5 witnesses about statements that either Mr. Hartline or Mr.
6 Bekkedam or their proxies made to them about leaving the
7 contingency after October 21st because that can't possibly be
8 material according to the Indictment.

9 They drew a line in the sand and said if you tell --
10 if you tell me we met the contingency by October 21st, then
11 you can get the TARP money. Therefore, if you lie about
12 meeting the contingency by October 21st, you lied about
13 something material. Materiality is defined in the indictment
14 by October 21st.

15 I appreciate the Court hearing me on this. I know
16 we've talked about it before, but I think the -- the
17 Government has made clear where it's going now in its opening
18 statement, and it's contrary to both the indictment and the
19 trial memo.

20 THE COURT: I don't see it that way.

21 MR. SCHWARTZ: Very well, sir.

22 THE COURT: All right. You have an exception.

23 MR. SCHWARTZ: Thank you. Then, Your Honor, the --
24 just to make -- so I understand the Court's terminology,
25 "exception" means a standing objection so we don't have to

Colloquy

32

1 renew this?

2 THE COURT: Absolutely.

3 MR. SCHWARTZ: Thank you, sir.

4 THE COURT: Mr. Engle.

5 MR. ENGLE: Your Honor, since I think we're going to
6 actually start some testimony at some point --

7 THE COURT: You sure?

8 MR. ENGLE: -- I would make a formal motion for
9 sequestration pursuant to Federal Rule of Evidence 615.

10 THE COURT: Granted. And those who will not be
11 testifying momentarily and who have to leave the room cannot
12 discuss their testimony with anyone else who was either on the
13 witness stand or comes from the witness stand.

14 MR. IGNALL: I don't -- I don't believe there's
15 anyone subject to sequestration who is the courtroom right
16 now.

17 THE COURT: All right.

18 MR. ENGLE: I don't know whether or not Agent Lyons
19 is. I mean --

20 MR. IGNALL: I think we reached an agreement
21 yesterday that he's not subject to sequestration.

22 MR. ENGLE: Oh, okay. Understood. That's what
23 happens when you miss Court.

24 THE COURT: All right. Are we ready?

25 MS. BARRY: Yes, Your Honor.

Schaffner - Direct (Bar)

33

1 THE COURT: All right.

2 (Pause)

3 THE CLERK: All rise.

4 (Jury in, 1:40 p.m.)

5 THE CLERK: Ladies and gentlemen, we are back on the
6 record.

7 THE COURT: Good afternoon. You may be seated.

8 The Government may call its first witness.

9 MS. BARRY: Thank you, Your Honor.

10 The United States calls Ted Schaffner.

11 THEODORE SCHAFFNER, GOVERNMENT'S WITNESS, SWORN

12 THE CLERK: Thank you. Please state and spell your
13 name for the record for me. You can have a seat.

14 THE WITNESS: My legal name or --

15 THE CLERK: Yes.

16 THE WITNESS: It's Theodore Schaffner. That's
17 spelled S-C-H-A-F-F-N-E-R.

18 THE CLERK: Thank you.

19 MS. BARRY: May I proceed, Your Honor?

20 THE COURT: You may proceed.

21 MS. BARRY: Thank you.

22 DIRECT EXAMINATION

23 BY MS. BARRY:

24 Q Good afternoon, Mr. Schaffner.

25 A Good afternoon.

Schaffner - Direct (Bar)

34

1 Q Mr. Schaffner, are you currently working?

2 A I'm currently retired.

3 Q And prior to your retirement where were you working?

4 A I worked at the U.S. Treasury.

5 Q And while you -- U.S. Treasury, what did you do there?

6 A I was the Director of the Capital Purchase Program.

7 Q And is the Capital Purchase Program sometimes referred to
8 as CPP?

9 A Yes.

10 Q Would you please tell the ladies and gentlemen of the
11 jury what the purpose of the Capital Purchase Program was?

12 A The purpose of the Capital Purchase Program was to invest
13 additional equity capital in banks that were viable without
14 additional funding.

15 Q And when you say "viable," what did that mean?

16 A It meant that we felt that even with the difficulties
17 that were occurring in the economy at that time that these
18 banks could survive with the level of capitalization and the
19 book that the -- book of loans that they had.

20 Q Okay. And so did that mean that they were viable without
21 receiving any investment from the CPP?

22 A That is correct. They had to be viable without our
23 investment.

24 Q And was the CPP part of a larger program?

25 A It was part of the Troubled Asset Program, sometimes

1 called TARP.

2 Q Now, can you just tell the members of the jury, please,
3 what did your department do or what did you oversee?

4 A We wanted to provide this funding to these banks promptly
5 so we felt that we didn't -- that -- that to do traditional
6 due diligence would be very time-consuming and require a much
7 bigger staff.

8 So we decided that we would rely on -- primarily on
9 the recommendation of the primary bank regulator who oversaw
10 the bank because we felt they were very knowledgeable about
11 these institutions.

12 Q Okay. So in terms of reviewing applications that were
13 coming into the CPP was the information provided to the CPP by
14 the primary regulator?

15 A Yes.

16 Q Now, was part -- if you could, just a little bit, if you
17 wouldn't mind, describe the process of an application coming
18 into the CPP.

19 A The application was a one-page recommendation or one-page
20 form that we developed that had information, plus a short
21 write-up. And in that write-up -- and it would come from the
22 primary bank regulator of the institution, and in that
23 write-up we needed the primary bank regulator to say that the
24 institution was viable without our funds.

25 Q Okay. And then did you have a department that took in

Schaffner - Direct (Bar)

36

1 those applications and reviewed them?

2 A Yes. There were people with bank -- bank regulator
3 experience on my staff, and every application that came in
4 would be reviewed by at least two of those bank regulators and
5 comment about them.

6 Q And can you tell the members of the jury what happened
7 from that review process with the applications?

8 A If we were comfortable with the material we received, we
9 could go directly ahead to make a preliminary indication
10 that -- that we would fund.

11 If we were worried about some aspect of the
12 application, we would discuss it with the primary regulator,
13 and if we still had questions about the institution, we would
14 refer it to a council.

15 Q Okay. And is that Council sometimes referred to as the
16 CPP Council?

17 A Yes.

18 Q And who comprised or made up the CPP Council?

19 A The CPP Council had four members, a senior member from --
20 one from each of the primary bank regulators. So one from the
21 Fed, one from the Office of the Comptroller of Currency, one
22 from the Office of Thrift Supervision and one from the FDIC,
23 the Federal Deposit Insurance Corporation.

24 Q And would the CPP Council then do a more thorough review
25 of the institution if there were concerns?

Schaffner - Direct (Bar)

37

1 A There would be a discussion at the Council discussing
2 the -- the various aspects of it. Sometimes the
3 institution -- the -- the primary regulator of the institution
4 of the -- that was being discussed, sometimes they would come
5 in and provide additional information.

6 But there -- then there would be a discussion within
7 the -- within the Council and a vote as to whether or not it
8 should be funded or not, what their recommendation was.

9 Q Was the CPP Council able to acquire additional
10 information about a financial institution?

11 A They could ask for more information from the primary
12 regulator, yes.

13 Q Okay. And, again, the -- all of the information that's
14 coming in to the CPP Council and then ultimately to the
15 Treasury would be from the primary regulator.

16 A Yes.

17 Q Now, in order to get approval from the CPP Council did
18 there need to be a -- well, let me ask you this.

19 How did -- how did a bank's application that went to
20 CPP Council come out of CPP Council? How -- how could -- how
21 did that happen?

22 A If there was a recommendation from CPP Council or if
23 there was a bank that -- that we thought didn't need to go to
24 CPP Council that we were comfortable with, the -- the matter
25 would then be taken to an Investment Committee that was made

Schaffner - Direct (Bar)

38

1 up of members of Treasury.

2 Q From the CPP Council you -- you said that there were
3 four -- there were representatives from the four regulating
4 bodies, is that -- is that right?

5 A Correct.

6 Q And so to come out of CPP Council would there be a --
7 need to be a majority vote for approval?

8 A Correct. If there were not a majority vote, we would not
9 take it to the -- to the Investment Committee.

10 Q Okay. Sir, I would like you to take a look at what's
11 been marked as Government's Exhibit 30.

12 And if you could just take a look on your screen,
13 hopefully, it -- it shows up there. And if it doesn't, please
14 let me know.

15 A It --

16 Q Do you see --

17 A Yes.

18 Q -- Government's Exhibit 30?

19 A I do.

20 Q And looking at Government's Exhibit 30 can you describe
21 what that is?

22 A This is a voting sheet that would be completed after a
23 discussion on a bank.

24 Q Okay.

25 A This particular one says Nova Bank. It's dated June 10,

Schaffner - Direct (Bar)

39

1 2009, and it indicates approval by FDIC, the Office of the
2 Comptroller of Currency, the OCC, the Office of -- Office of
3 Thrift Supervision, and it shows that the member from the
4 Federal Reserve Bank did not recommend approval.

5 Q Okay.

6 A At the bottom there's an indication that -- that the --
7 the approval is based on -- it -- contingent on capital
8 injection of \$15 million.

9 MS. BARRY: Your Honor, the Government would move
10 for the admission of Government's Exhibit 30.

11 MR. SCHWARTZ: No objection.

12 THE COURT: Admitted.

13 MS. BARRY: If we could please display that to the
14 jury.

15 MS. BARRY: Okay.

16 BY MS. BARRY:

17 Q So looking at Government's Exhibit 30, which is the first
18 page of a three-page document, if we could look particularly
19 at the -- you're saying that there were votes by each of the
20 members of the Council, is that -- is that right?

21 A Correct.

22 Q Okay. And star -- there's an asterisk at the bottom.

23 MS. BARRY: And if we could blow that up, please.
24 Okay.

25 BY MS. BARRY:

Schaffner - Direct (Bar)

40

1 Q And the approval was contingent in capital injection of
2 \$15 million. Is that what the Council recommended?

3 A Their approval was based on a capital injection of \$15
4 million.

5 MS. BARRY: And, again if we could -- if you don't
6 mind, making the whole page show again, please. Thanks.

7 BY MS. BARRY:

8 Q Again, this was for an institution called Nova Bank at a
9 Council meeting dated June 10, 2009.

10 A Correct.

11 Q Okay. Now, up until this point did you personally or
12 even at this point have any direct communication or -- with
13 Nova Bank?

14 A No.

15 Q Who would have the direct communication with Nova Bank?

16 A The primary regulator.

17 Q And who was the primary regulator for Nova Bank?

18 A I believe FDIC.

19 Q Okay. Now, the CPP Council made this recommendation,
20 and, again, coming out of CPP Council is the recommendation
21 made based on the fact that the bank would be viable without
22 TARP fundings?

23 A Yes.

24 Q Okay. Now, at some point in time do you know whether or
25 not Nova Bank received a formal preliminary approval letter

Schaffner - Direct (Bar)

41

1 from the Treasury?

2 A Yes. They did receive a preliminary approval from
3 Treasury.

4 Q Okay. And I'd like you to take a look now, please, at
5 Government's Exhibit 75.

6 MS. BARRY: And if we could just show that to the
7 witness at this point.

8 BY MS. BARRY:

9 Q Do you have what's been marked as Government's Exhibit 75
10 on the screen before you, sir?

11 A I have page one of it, yes.

12 Q Okay. And what is Government's Exhibit 75?

13 A When a -- an institution had gone to the Investment
14 Committee and had received a positive vote at the Investment
15 Committee, we would send a letter to the institution
16 indicating preliminary approval and providing some information
17 about how they -- what they needed to do to proceed through a
18 process where funding would occur.

19 A Okay.

20 MS. BARRY: And if we could just please show the
21 witness page two of that letter.

22 BY MS. BARRY:

23 Q Sir, is this a letter that was signed by you?

24 A Yes.

25 MS. BARRY: The Government would move for the

Schaffner - Direct (Bar)

42

1 admission of Government's Exhibit 75, please.

2 MR. SCHWARTZ: No objection.

3 THE COURT: Admitted.

4 MS. BARRY: And if we could please publish page one
5 to the jury. Okay.

6 BY MS. BARRY:

7 Q Now, looking at page one of Government's Exhibit 75 does
8 this -- is this a letter being sent to a Jeffery Hanuscin at
9 Nova Financial Holdings?

10 A Yes.

11 Q Okay. And within this -- if we could focus in on the
12 second full paragraph. Okay.

13 In that paragraph what is -- what are you telling
14 Mr. Hanuscin and his -- his bank? And the bank, Nova, at that
15 time.

16 A Well, it indicates that our consideration and the
17 recommendation of the applicant's primary bank regulator, it
18 indicates that there's preliminary approval at the dollar
19 amount that we were prepared to invest and a condition that
20 \$10 million of additional equity be obtained prior to closing.

21 MS. BARRY: And -- and if we could, I don't know if
22 it's -- we're going to test Agent Boyer's capabilities here --
23 can we highlight the sentence:

24 "Based on its review and relying on the information
25 provided to it on August 20, 2009 Treasury preliminarily

Schaffner - Direct (Bar)

43

1 approved the application in the amount of \$13,472,000
2 with the express condition that 10 million in additional
3 equity is obtained prior to closing?"

4 And is that what was stated to Nova Bank in that
5 letter?

6 A Yes.

7 Q Okay. Now, in terms of the \$15 million contingency on
8 June 10, 2009, did that contingency change at all?

9 A I don't believe it did.

10 Q And this says 10 million of additional equity.

11 A The discrepancy between the 15 million and the 10
12 million, I don't have a current recollection, you know, as far
13 as --

14 Q Did you --

15 A -- how that occurred.

16 Q -- change it? Would you have changed that?

17 A We would not have changed it on our own.

18 A Okay. Now, in terms, again, any information that came to
19 you regarding Nova Bank would be from it's primary regulator?

20 A Yes.

21 MS. BARRY: May I have one moment, Your Honor?

22 THE COURT: Surely.

23 (Pause)

24 BY MS. BARRY:

25 Q Now, back in June of 2009 when that -- when the CPP

Schaffner - Cross (Ega)

44

1 Council approved Nova Bank with the \$15 million contingency,
2 do you know whether the FDIC had advised Nova that the CPPC
3 Council had approved it with the \$15 million contingency?

4 A I don't have first-hand information on that.

5 Q Thank you.

6 MS. BARRY: Oh, one more question, Your Honor.

7 THE COURT: Surely.

8 BY MS. BARRY:

9 Q And in terms of what Nova Bank told the FDIC do you have
10 any -- do you know whether or not Nova told the FDIC that it
11 had raised five million of the \$15 million contingency?

12 MR. SCHWARTZ: Objection; leading.

13 THE COURT: Sustained.

14 BY MS. BARRY:

15 Q Do you know what Nova Bank told the FDIC about its
16 contingency?

17 A I don't.

18 Q Okay.

19 MS. BARRY: No further questions.

20 THE COURT: You may cross-examine.

21 MR. EGAN: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. EGAN:

24 Q Good afternoon Mr. Schaffner.

25 A Good afternoon.

Schaffner - Cross (Ega)

45

1 Q In -- you're retired now?

2 A Yes, I am.

3 Q Nice. In 2009 you were the head of the CPP, basically,
4 right?

5 A I was the Director of the program, yes.

6 Q And that was the -- you were the most senior person in
7 that program, correct?

8 A Yes. I mean I obviously reported to more senior people,
9 but yes.

10 Q Well, you -- to the Treasury Secretary, right?

11 A To an Assistant Secretary.

12 Q And as the person in charge, needless to say, you had a
13 whole lot of people, and I'm -- I don't mean to suggest you
14 had, you know, thousands of them, but you had people who
15 reported to you and who dealt with the day-to-day operations
16 of that particular program, correct?

17 A Yes.

18 Q And it would be fair to say that you pretty much relied
19 on them to provide you the information you needed to make the
20 important decisions that you were making.

21 A I certainly relied on them to do their job, but our
22 primary -- the primary thing I relied on for purposes of
23 taking things to the investment committee was the
24 recommendation of the primary regulator with the input that I
25 got from my staff.

Schaffner - Cross (Ega)

46

1 Q Right. And so -- and that was actually not somebody who
2 worked for you on CPP, but that would be one of the other
3 agencies that happened to be the primary regulator of that
4 particular institution, right?

5 A We're talking about the recommendation?

6 Q Yeah.

7 A Yes.

8 Q Okay. So let's just talk a little bit about the CPP
9 itself.

10 It came to be because of the financial crisis in
11 2008, right?

12 A Yes.

13 Q And in -- it was a bit of an emergency?

14 A Yes.

15 Q And a very high priority with the Government?

16 A Yes.

17 Q And when it was first instituted was in October of 2008,
18 right?

19 A Right, approximately.

20 Q And when it was first instituted, one of the things it
21 did was to seek banks who are interested in taking advantage
22 of the program, right?

23 A Yes.

24 Q And one of the things it did was to provide an
25 application to those banks to fill out so that they might get

Schaffner - Cross (Ega)

47

1 this lending, right?

2 A Yes, I -- the one reason I hesitate, I think it was all
3 provided through the primary bank regulators.

4 Q Okay.

5 MR. EGAN: If we could have Government 6.

6 BY MS. BARRY:

7 Q Sir, there's a document in front of you, and it's
8 Government's Exhibit 6. It's called an Application for TARP
9 Capital Purchase Program.

10 Are you familiar with that?

11 A Yes.

12 Q And that is a document that the Government created so
13 that banks could provide whatever information the Government
14 sought so they could begin this process, is it not?

15 A Yes.

16 Q Now, I guess what you're saying is this was not something
17 that CPP did, it was, rather, something that was done by one
18 of the other various regulators?

19 A I'm not certain how we -- how we distributed that.

20 Q In any event, what it is, is it's an application that
21 went out to banks so they could fill out to apply for these
22 funds, right?

23 A Yes.

24 Q And this particular one --.

25 MR. EGAN: Oh, and Your Honor, I would move for the

Schaffner - Cross (Ega)

48

1 admission of Government Exhibit 6.

2 THE COURT: Any objection?

3 MS. BARRY: No objection, Your Honor.

4 THE COURT: Admitted.

5 MR. EGAN: And we could publish it for the jury?

6 THE COURT: Admitted, and he can publish it.

7 MR. EGAN: Thank you, Your Honor.

8 BY MR. EGAN:

9 Q So this is your application for TARP Capital Purchase
10 Program, correct?

11 A Right.

12 Q And this particular one is that of Nova Financial
13 Holdings?

14 A Correct.

15 Q And the primary contact is a Jeffrey Hanuscin?

16 A Correct.

17 Q Right. Now, you never spoke to Jeffrey Hanuscin, did
18 you?

19 A No.

20 Q You -- did you know he was the CFO of Nova Bank?

21 A I don't know. I'm not sure I would have concerned myself
22 with it.

23 Q Of course. And under -- there's a secondary contact.
24 That's Brian Hartline.

25 A Correct.

Schaffner - Cross (Ega)

49

1 Q And you never spoke to Brian Hartline, either, right?

2 A No.

3 MR. EGAN: And then if we could go to the second
4 page, and if we could just make that a tiny bit bigger so the
5 jury can maybe read it a little better.

6 BY MR. EGAN:

7 Q This is all of the information that was requested of the
8 applicant bank with regard to applying for this program,
9 correct?

10 A Yes.

11 Q So the application that we're speaking of really only
12 asks like five questions.

13 A Right.

14 Q Okay. And you never reviewed this application, did you?

15 A It was probably part of the package.

16 Q Now, at the time that TARP -- then this was filed on
17 October -- I'm sorry to do this, but October 27, 2008 is the
18 date that this was signed, right?

19 A Well, that's the date indicated on the --

20 Q Okay.

21 A -- document.

22 Q So that's the date that Nova Bank's application hits
23 TARP, and probably your department or probably FDIC.

24 A It -- that's where I don't remember for sure. It may
25 have come directly to us.

1 Q Okay. But in any event what you would do, if it did come
2 directly to you, is you would ask the primary regulator to
3 take a look at that bank and then give you information so that
4 a decision could be made in the process that you described on
5 your direct.

6 A Correct. It was decided that we didn't have the staffing
7 or the time to do our own due diligence. So, instead, we
8 relied on the knowledge of the primary bank regulator who
9 regularly, you know, visits these banks and evaluates them.

10 And we would rely on the work that they had done and
11 their statement that the bank was viable without our funding.

12 Q And there was a good reason for that, because that
13 primary regulator is the one that inspects the bank regularly,
14 right?

15 A The primary regulator inspects the bank and has fairly
16 detailed knowledge of the bank.

17 Q And certainly their examiners are the ones that go out
18 and go into the bank and do the examinations.

19 A Yes.

20 Q And they're the ones who have the ability to look at the
21 balance sheets of the bank and look at all the paperwork at
22 the bank so they can figure out what's actually going on.

23 A They have very extensive information on these banks.

24 Q Now, I'm a little confused here because the FDIC you've
25 identified as the primary regulator.

Schaffner - Cross (Ega)

51

1 Nova Financial Holdings is actually the holding
2 company for the bank. Were you familiar with that?

3 A That's not a surprising thing --

4 Q Right.

5 A -- in -- in banks.

6 Q Yes, but aren't they regulated by the Federal Reserve
7 Board and not by the FDIC?

8 A How they divvy that up, you'd really do better talking
9 with -- with them. I think it depends on several factors.

10 Q Okay. But in any event, this one came to the FDIC.

11 A Right.

12 Q Now, at the same time this was filed in October of 2008
13 you were also -- your program was also dealing with much
14 larger banks, correct?

15 A I joined the program in January of 2009.

16 Q Oh, so you were not at the CPP when the -- this
17 application was received?

18 A Correct.

19 Q Okay. And you -- were you not at the CPP when the
20 funding was provided to the -- the Wells Fargos and the
21 CitiBanks of the world?

22 A Correct. I was not there.

23 Q So you don't know what took place with regard to the way
24 that was done.

25 A I have no first-hand knowledge of that.

Schaffner - Cross (Ega)

52

1 Q But you do know that they had been funded before you even
2 got there, right?

3 A I was aware from what I read in the newspaper, yeah.

4 Q Okay. In any event, there is a process here, and that is
5 that the primary regulator, who we've determined for some
6 reason was the FDIC in this case, makes a recommendation,
7 correct?

8 A Uh-huh.

9 Q That recommendation, if it seems completely no issues
10 whatsoever, you would approve without the CPP Council vote?

11 A Correct.

12 Q And that would be determined because that was a
13 particularly robust bank?

14 A Correct.

15 Q And you would make that determination based upon the
16 financial materials that are presented to your office?

17 A Correct.

18 Q Did you actually really participate in any of this
19 decision making, or were you more like the people below you
20 said, hey, this is the deal, and you would write the letter?
21 I don't mean to say that in a negative way.

22 A I was -- I was present at every -- pretty much
23 everything, most of the meetings of the Investment Committee
24 when -- and I would have the people who are bank regulators
25 present each one of these banks.

1 If there were issues, they could -- they could
2 discuss them with me. That would generally occur prior to
3 that time.

4 Q Okay. And then you would make --

5 A And -- and --

6 Q -- the final call.

7 A And -- yes. And then at the -- I also tried to attend
8 all. If not, I certainly attended most of the meetings of
9 the -- of the Council so I could participate in the discussion
10 and also provide the benefit of that dialog to the Investment
11 Committee.

12 Q Okay. So for -- for Nova Bank we know that at some point
13 FDIC passes on to the Council, correct?

14 A They passed it on to us. We had concerns about it. So
15 we took it to the Council.

16 Q Okay. And the concerns that you had was whether or not
17 Nova would be viable without TARP funds, correct?

18 A Correct.

19 Q And that was based on its historical earnings, I assume?

20 A Yeah. I think it was -- it was based also in part on its
21 capitalization and, you know, the -- its book of business, how
22 it had been marked by the -- or how it had been evaluated by
23 the primary regulator.

24 Q And --

25 MR. EGAN: If we could have Government's 30 back.

Schaffner - Cross (Ega)

54

1 BY MR. EGAN:

2 Q You were shown this on direct examination.

3 A Uh-huh.

4 Q This is the actual Council review decision sheet,
5 correct?

6 A Right.

7 Q And do you remember being at this meeting?

8 A You know, I --

9 Q A long time ago.

10 A It was a long time ago. I do not have a primary
11 recollection of this meeting. I have seen something that
12 indicates that I was at this meeting.

13 Q Okay. But you don't really remember -- off the top of
14 your head you don't remember what --

15 A Off the top of my head. It wasn't memorable enough for
16 me to have kind of kept it in mind to this date.

17 Q And you'll note that the Federal Reserve Bank disapproved
18 the --

19 A Correct. They did not recommend.

20 Q And the Federal Reserve Bank's disapproval certainly,
21 ultimately would have had some impact on your thinking about
22 it, right?

23 I mean you -- you'd consider what they thought,
24 right?

25 A Yes.

Schaffner - Cross (Ega)

55

1 Q Now, if you'll --

2 A But -- but three other regulators did approve it.

3 Q Of course. Now if you'll turn to page three of this
4 document, and if you go down to the bottom of that paragraph
5 where it says, "Mr. Bertsch stated his belief."

6 Now, Mr. Bertsch is the Federal Reserve Bank
7 regulator, correct?

8 A He is a part of the Fed, yes.

9 Q He -- well, he was the Fed's representative on this
10 committee.

11 A He was the Fed's representative on the --

12 Q And he was the one who voted no?

13 A -- CPP Council. Correct.

14 Q And it says there that Mr. Bertsch corrected his earlier
15 statement that a review of the HC, I assume that's holding
16 company, was pending, noting that Ms. Course had informed him
17 that the FRB, that's the Federal Reserve Bank, had recently
18 completed an inspection of the holding company.

19 So I guess that's where I took that the Federal
20 Reserve Bank was the one actually overseeing the holding
21 company, but neither here nor there.

22 Will be rating it a three.

23 Q Now, you are familiar with Camels ratings, correct?

24 A Yes.

25 Q And a three's not particularly great, right? Not

Schaffner - Cross (Ega)

56

1 terrible, not --

2 A I think they go from one to five, so it's --

3 Q Correct. So it's kind of in the middle.

4 And is planning to impose dividend restrictions on
5 the holding company.

6 A Right.

7 Q That means that the holding company can't pay dividends
8 to its stockholders, correct?

9 A Yes.

10 Q And the TARP program basically would have made the CPP a
11 stockholder in Nova, right? Isn't it the way it worked?

12 A I believe that's correct.

13 Q And as a stockholder in Nova the way the TARP program got
14 paid back would be by paying dividends to the CPP. That's the
15 way it was set up, right?

16 A Right.

17 Q So the fact that Nova couldn't pay those dividends would
18 certainly be a very valid basis for a refusal of this
19 application, correct?

20 A It would depend on what the dividend restrictions were.

21 Q And -- but certainly you would -- it would be certain
22 circumstances where that would clearly be a reason not.

23 A It'd be a reason to have in consideration.

24 Q Yes. Certainly. Just like all of the other factors.

25 In any event, Mr. Bertsch -- Mr. Bertsch's concerns

Schaffner - Cross (Ega)

57

1 were outvoted by his colleagues, correct?

2 A Right.

3 Q And a contingency -- it says contingent on capital
4 injection of 15 million, and this was then passed on to you?

5 A Correct.

6 Q Okay. That's June 10th of 2009.

7 A Right.

8 Q Now, if we could go to the Government's Exhibit 75, which
9 has already been admitted so you can publish it, that is what
10 I believe you called a preliminary approval letter?

11 A Correct.

12 Q And the reason it's a preliminary approval letter is
13 because it's not a final approval?

14 A Correct.

15 Q And the final approval isn't going to take place until
16 all the I's are dotted and all the T's are crossed, correct?

17 A Correct.

18 Q Now, this letter's dated August 25, 2009, right?

19 A Yes.

20 Q And it's signed by you?

21 A Correct.

22 Q And were you aware that between June 10th of 2009 and
23 August 25th of 2009 that there was an -- a banking inspection
24 taking place at Nova?

25 A I'm not sure that I was aware of that.

1 Q Okay. But certainly there's a banking inspection
2 basically every year, depending on the strength of the
3 financial institution. Could be less, could be more, correct?

4 A Right, and I think depending on size there's --
5 there's -- the primary regulators are -- they're more or less
6 frequently.

7 Q And this whole program, the way you set this up, was so
8 that the primary regulators' inspections would be kind of the
9 main basis upon which you would decide what you wanted to do?

10 A Correct.

11 Q So no one was stopping any primary regulators from coming
12 to Nova and inspecting it during this period of time, correct?

13 A Certainly we weren't.

14 Q Of course not. So Ms. Barry showed you a -- a sentence
15 in here about this being based upon a \$10 million contingency,
16 right? That's one of the things that had to happen before you
17 would give the money.

18 A Correct.

19 Q But there's a whole bunch of other stuff, too, isn't
20 there?

21 If we could go right below there, it says, "Closing
22 of the transaction" -- thank you.

23 "Closing of the transaction is subject to
24 satisfaction as determined by Treasury in its sole discretion
25 of all the conditions of the Act and the following

1 condition -- additional conditions," correct?

2 A Correct.

3 Q So this thing is not only requiring 10 million more in --
4 in capital, it's requiring quite a few other things, right?

5 A Yes.

6 Q And in fact if we go to the next page, the third
7 paragraph from the last, it starts, "We note that Treasury" --
8 "We note that Treasury may require additional representations,
9 warranties or covenants," that's more things that Treasury may
10 ask for in the future, right?

11 A Uh-huh.

12 Q "And based upon the outcome of further business and legal
13 due diligence."

14 So in other words, Treasury was going to continue to
15 inspect and examine, or somebody was going to on your behalf
16 before you would be giving out this -- the Government's money,
17 correct?

18 A Yeah. We had the right to do that, and we would always
19 check back with the primary bank regulator to -- to make sure,
20 when we were about to fund, that they continued to have their
21 recommendation.

22 Q Of course. And so basically up until the very day that
23 you would have funded this application you were going to be
24 checking and making sure that everything checked out, right?

25 A We had the right to do it, but, again, we -- we relied on

Schaffner - Cross (Ega)

60

1 the primary bank regulator and mostly -- and -- and the -- the
2 thing that -- so we'd kind of stay advised if there were
3 developments that they wanted to tell us about, and we would
4 check back with them before we funded.

5 Q And what you relied on, I think you said it a couple
6 times, you relied on the primary regulator, right?

7 A Correct.

8 Q You didn't rely on Brian Hartline?

9 A (No audible response)

10 Q You never talked to him, did you?

11 A I did not talk to him.

12 Q Now, going to the next paragraph, begins with "Neither,"
13 "Neither this letter nor any other oral or written statement
14 or representation by Treasury constitutes a binding
15 obligation."

16 So basically you're not -- you don't have to do
17 anything at this point?

18 A With the preliminary approval, correct.

19 Q Correct. And it goes on and on about bad things that
20 could happen between now and then that would cause this to not
21 go through. Right?

22 A Right.

23 Q And we all know this never did go through, correct?

24 A I've learned that recently.

25 Q Okay. Now I want you to take a look at Government

Schaffner - Cross (Ega)

61

1 Exhibit 142. And this has not been admitted yet, so.

2 And this is a recordation of a telephone
3 conversation. And if you just take a moment to read it.

4 And, really, if you could focus, sir, on the second
5 to last paragraph.

6 A Okay. Let me just kind of read the whole thing.

7 Q Oh, sure. Please do.

8 A Okay.

9 Q Now, this is a recording -- a recordation of a telephone
10 conversation between some folks at the Federal Reserve Bank,
11 Joe Wilcox and Cindy Course and Brian Hartline, correct?

12 A And you're saying Joe and Cindy were FDIC?

13 Q They're -- they're -- I think they're Federal Reserve, to
14 be honest with you.

15 A Federal Reserve?

16 Q Oh, no. They are FDC. I apologize.

17 MS. BARRY: Objection.

18 MR. EGAN: Well --

19 THE COURT: Sustained.

20 BY MR. EGAN:

21 Q I'm not supposed to answer your questions.

22 In any event, they're people who work for the
23 Government, obviously, correct?

24 A I --

25 Q You don't know. I'm sorry.

Schaffner - Cross (Ega)

62

1 A I kind of remember Cindy's name, but I don't -- I can't
2 place exactly who she is right now.

3 Q And maybe we'll meet them. Who knows?

4 A Okay.

5 Q I want to focus on the fourth -- the last -- second to
6 last paragraph.

7 A Uh-huh.

8 Q And all I want to ask you is that's consistent with your
9 understanding of the way the CPP works, correct?

10 A What -- what's going on here is that the FDC says that it
11 will not recommend an application for a bank to be adequately
12 capitalized if it's got this restriction.

13 Q In other words --

14 A It sounds to me like that's an FDIC restriction.

15 Q Okay. So that FDIC is telling Brian Hartline on December
16 of 2009 that if you can't pay dividends on your stock, we're
17 not going to recommend you, correct? That's what they're
18 saying.

19 A That appears to be what -- what's being said here.

20 Q It is exactly what Mr. Bertsch said in June of 2009 at
21 the meeting, isn't it?

22 A I'd have to go back and look. I think --

23 Q Well, we can do that.

24 A -- that he was -- I think he was --

25 Q If we go back to Government 30.

Schaffner - Cross (Ega)

63

1 A I think he said he was concerned about that.

2 Q Well, he said they're not going to be able to pay
3 dividends on their stock.

4 A Okay.

5 Q Correct? If we go to the --

6 A But the --

7 Q -- third page.

8 A But they were under -- but they were under review, right?

9 Q Right. And then he voted against it.

10 A Uh-huh.

11 THE COURT: You have to say yes or no, please, sir.

12 THE WITNESS: Oh, I'm sorry.

13 BY MR. EGAN:

14 Q And then he voted against it?

15 A Yes, he voted against it. Sorry.

16 Q So basically all of this stuff that took in -- in
17 between, didn't change that at all, did it.

18 MS. BARRY: Objection.

19 THE COURT: Sustained.

20 BY MR. EGAN:

21 Q All right. If we could go to Government's 155, and, sir,
22 are you familiar with this document?

23 A Yes.

24 Q Okay. And this is a TARP Capital Purchase Program case
25 decision memo, correct?

Schaffner - Cross (Ega)

64

1 A Correct.

2 Q And just -- you're familiar with it, correct?

3 A Yes.

4 MR. EGAN: Is there any objection to the admission
5 of this document?

6 MS. BARRY: I think -- let's establish that he's
7 seen it and has a chance to look at it, has he --

8 THE COURT: Counsel, you can --

9 MR. EGAN: Your Honor, may I approach?

10 THE COURT: Lay a foundation, could you, please.

11 MR. EGAN: I'd rather -- if I give him the paper it
12 will be a lot easier than for him to roll through.

13 THE COURT: I'm sorry.

14 MR. EGAN: It would be easier for him to look at it
15 on paper than to go through all this -- the pages.

16 THE COURT: Any objection?

17 MS. BARRY: I just -- Your Honor, we withdraw
18 objection.

19 THE COURT: All right. You may approach.

20 MS. BARRY: Yeah, it's okay to publish it, Judge, if
21 it makes things go faster for --

22 THE COURT: Thank you.

23 BY MR. EGAN:

24 Q If you could, sir, just page through that document. I
25 just -- I just want to make sure it's -- that you're familiar

Schaffner - Cross (Ega)

65

1 with it, you've seen it before.

2 A The -- the one thing that I'm not sure about on this
3 document is, you know, if you go back to the CPP Council where
4 there was the discussion of the contingency for the extra, you
5 know, 15 million, I asked them to republish this paper.

6 So I'm not sure if this is the one prior to or the
7 one subsequent to the -- to the -- to reflect the capital
8 injection.

9 MR. EGAN: May I approach again, Your Honor?

10 THE COURT: Yes, sir.

11 THE WITNESS: Just trying to --

12 MR. EGAN: I'm going to take it from you. I can't
13 ask questions about it if I don't have it.

14 BY MR. EGAN:

15 Q See the handwriting up here at the top?

16 A Yes.

17 Q Says December 18, '09, IC meeting, number two agenda
18 item. Does that refresh your recollection?

19 A December 18th?

20 Q Do you -- it's okay. If you have no --

21 A I --

22 Q -- it's okay.

23 A I --

24 Q Don't worry about it. I'll withdraw the question.

25 You said a few times on direct examination that TARP

Schaffner - Cross (Ega)

66

1 funds would not be given to a bank in order to make it viable.

2 It would have to be viable without the TARP funds.

3 A Correct.

4 Q You never communicated that to Mr. Hartline or Nova Bank,
5 correct?

6 A We never spoke directly to the banks.

7 Q And you don't know, sitting there, whether anyone else
8 ever communicated that directly to him?

9 A I don't have any personal knowledge about that.

10 Q And other than the fact that this application was
11 ultimately denied and no money was given to Nova Bank, you
12 don't really have much of a recollection about this at all,
13 correct?

14 A It was one of quite a few that --

15 Q That got denied.

16 A -- passed through my office.

17 MR. EGAN: May I have a moment, Your Honor?

18 THE COURT: Yes, sir.

19 (Pause)

20 BY MR. EGAN:

21 Q The decisions of the CPP Council and their deliberations,
22 that's not something that was made public, correct?

23 A Correct.

24 Q And in fact there was a reason for that, right?

25 A (No audible response)

Schaffner - Cross (Ega)

67

1 Q Well, the bank wanted to -- or, the bank, excuse me.

2 The Government wanted to be able to have those
3 deliberations in a way that they could do them soberly and
4 thoughtfully without necessarily being scrutinized, correct?

5 A Our goal was -- was to try and help fund these good
6 banks. We didn't want to do anything that hurt a bank.

7 So if a bank was recommended by its primary
8 regulator and they said they thought it was viable, we would
9 have been very uncomfortable releasing any information
10 suggesting that we didn't think it was viable, fearing that
11 that could cause a run on the bank.

12 So it was confidential, like all bank examination
13 information, for a very, very good reason.

14 Q Oh, right, and I'm not -- I'm not suggesting any way,
15 shape or form it's not a good reason, but the fact is there
16 were reasons why this was all pretty much done in secret, for
17 lack of a better way of putting it.

18 A Yes. And that was for the benefit of the banks.

19 Q Indeed. And even the banks themselves were not told a
20 lot of what was going on in a lot of the decision-making
21 process, correct?

22 A Yeah, the primary regulator had some discretion as far as
23 what to discuss with banks, but, you know, I think that they
24 probably used their discretion, as well.

25 Q It wouldn't surprise you if the primary regulator said we

Schaffner - Cross (Dun)

68

1 can't talk to you about that, would it.

2 MS. BARRY: Objection.

3 THE COURT: Sustained.

4 MR. EGAN: Very well. I have nothing further, Your
5 Honor.

6 THE COURT: Is there redirect?

7 MR. DUNCAN: Your Honor, may I?

8 THE COURT: Oh, I apologize, Counsel. Go ahead.

9 MR. DUNCAN: I know I can be quiet over here.

10 CROSS-EXAMINATION

11 BY MR. DUNCAN:

12 Q Good afternoon, sir.

13 A Good afternoon.

14 Q Sir, where are you from? Where are you from?

15 A That's a -- sometimes an easier question to answer,
16 sometimes harder.

17 I split my time between Illinois and Arizona.

18 Q When -- how long have you been retired?

19 A I retired right after I left, so five or six years.

20 Q Okay. Back in 2009 where were you working? Where was
21 your physical office?

22 A It started off in the Treasury building, then we moved to
23 an auxiliary office in --

24 Q That's --

25 A -- D.C.

Schaffner - Cross (Dun)

69

1 Q -- down in Washington.

2 A Yeah.

3 Q Okay. Thank you.

4 Sir, how long had you worked at the Treasury at the
5 time you were involved in the CPP program?

6 A I came to the Treasury for purposes of being part of that
7 program.

8 Q So right around that time, January 2009?

9 A January, right.

10 Q What were you doing before?

11 A I had just retired from a career. I had worked for a
12 corporation.

13 Q And what kind of work did you do?

14 A Corporate development.

15 Q Do you have any sort of legal background?

16 A Yes.

17 Q What is your legal background?

18 A I have a law degree.

19 Q And did you ever practice law?

20 A Yes.

21 Q What was your area of practice?

22 A Various things. Securities, finance, that type of stuff.

23 Q During the course of Ms. Barry's examination of you you
24 said that the purpose of the CPP program was to invest equity
25 capital, correct?

1 A Correct.

2 Q And you've told people that you're not actually a expert
3 on bank regulations, are you.

4 A Correct.

5 Q So you don't really know too much about what all the bank
6 regulations are with respect to equity capital, do you, sir.

7 A That's correct.

8 Q But you're in charge of the program that's giving out
9 equity capital to banks, but you don't know what it is?

10 A You know, I think that the question that we were asking
11 was whether they were viable, which means to me whether or not
12 the money was good, which really doesn't turn on bank
13 regulation.

14 Q My question was more directed.

15 You're running this program --

16 A Right.

17 Q -- and you need to know a lot of stuff about the program,
18 right?

19 A I need to know if the bank's viable.

20 Q And one of the things you didn't know anything about were
21 specific bank regulations, even though you worked with the
22 program, correct?

23 A Correct.

24 Q Sir, have you -- do you know what EITF85-1 is?

25 A I don't.

Schaffner - Cross (Dun)

71

1 Q Did you testify that you were -- I'm sorry if I -- if I
2 misheard it.

3 But did you testify you don't even know what
4 happened to the Nova TARP application? Is that correct?

5 A My -- I did not recall it before seeing some of these
6 documents.

7 Q Okay. When did you see some of these documents, sir?

8 A In preparation for testifying.

9 Q And when was that?

10 A Some today, some last several weeks.

11 Q First time you ever spoke to anybody in the prosecutor's
12 office was approximately October 9th of 2015, is that correct?

13 A That sounds approximately right. I'm -- don't have an
14 agenda.

15 Q I --

16 A That isn't marked, so --

17 Q I won't hold you to the date.

18 A -- it's -- yeah.

19 Q I have the documents, so I --

20 A Okay.

21 Q -- I got a little bit of advantage on you.

22 A Good, good.

23 Q But, yeah, that's about right.

24 And you told the prosecutors you were not an expert
25 in bank regulations, right?

Schaffner - Cross (Dun)

72

1 A Correct.

2 Q Sir, prior to being interviewed by the prosecutors in
3 October of 2015 had you even thought about Nova Bank since
4 2009?

5 A No.

6 MR. DUNCAN: Could we put back up the CPP 30,
7 please?

8 BY MR. DUNCAN:

9 Q Do you have it in front of you, sir?

10 A Not yet.

11 Q Okay.

12 A It's up now.

13 Q You all set?

14 A It's here, yeah.

15 Q Okay.

16 MR. DUNCAN: Sean, could you go to page two?

17 BY MR. DUNCAN:

18 Q Sir, you've read this document, correct?

19 A Yes.

20 Q And to the best of your knowledge this records the
21 statements made by members of the Capital Purchase Program
22 Council back on June 10, 2009 when they were reviewing the
23 Nova application, correct?

24 A Correct?

25 MR. DUNCAN: And, Sean, could you put -- put up

Schaffner - Cross (Dun)

73

1 paragraph two and highlight it?

2 BY MR. DUNCAN:

3 Q Sir, this states that the holding company is in the
4 process of consolidating the two subsidiary banks.

5 Do you know what they're referring to there?

6 A At this point I can't say for sure.

7 Q Okay. You note that it says, also, the next line,
8 "Earnings have improved in March 2009 largely because of the
9 recently acquired insurance subsidiary."

10 Do you see that?

11 A Correct.

12 Q Do you know who the recently acquired insurance
13 subsidiary is?

14 A I don't know, but --

15 Q When it says that the earnings have improved, they're
16 talking about the earnings of the holding company, correct?

17 A I think so.

18 Q Okay.

19 MR. DUNCAN: Go down, Sean, if you would, to the
20 last. It's four lines from the bottom of that paragraph. It
21 begins, "A private investor..."

22 And if you highlight the whole thing, please, Sean.
23 Thank you.

24 BY MR. DUNCAN:

25 Q Sir, this says that a private investor has proposed to

1 invest a minimum of \$15 million in the holding company.

2 Do you see that?

3 A Yes.

4 Q To the best of your knowledge, that was true, correct?

5 A Yes.

6 Q And the number was not 15 million, but a minimum of 15
7 million, right?

8 A Correct.

9 Q Could have been as much as 18 million, right?

10 A Correct.

11 Q And up to a \$40 million total, correct?

12 A Correct.

13 Q Okay. This big investor putting that money in would have
14 returned the bank to a well-capitalized status, correct?

15 A That's what it says, yeah.

16 Q Okay. And make the investor a ten percent shareholder,
17 correct?

18 A Correct.

19 Q What does that mean? Why is that significant that it
20 would make him a ten percent shareholder?

21 A One of the things that I learned that bank regulators
22 consider when looking at a bank is whether there's a source of
23 strength in one of the investors in a bank. So that's
24 something that is taken into account.

25 Q Are you familiar with the process known as the Change in

Schaffner - Cross (Dun)

75

1 Control process?

2 A I know a little bit about that but not much.

3 Q Probably no more than I do so we'll -- we'll stay away
4 from that, both of us.

5 It says down there that Mr. Bertsch gets quoted. He
6 gets quoted a lot here. It says --

7 MR. DUNCAN: Sean, if you go down to the third
8 paragraph, please? It's fifth line down. And then it begins,
9 "He noted..."

10 BY MR. DUNCAN:

11 Q Sir, it says, "He noted that if the bank receives a --
12 the \$15 million capital injection, the depreciated securities
13 could be charged off, and the bank would still be well
14 capitalized."

15 Now the \$15 million capital injection there, we're
16 still talking about that big investor, right?

17 A I believe so.

18 Q Okay. Do you know what the rest of that means?

19 A It means I -- what I take this to mean is that with that
20 injection and with a write-off of certain assets they would
21 still meet the financial ratio that allows the bank to be
22 considered as well capitalized.

23 Q And that's a good thing, right?

24 A Yes.

25 Q That's what you were looking for in the banks that you

Schaffner - Cross (Dun)

76

1 were considering, correct?

2 A We were looking for viability.

3 Q Sir, Mr. Egan asked you a few questions about the
4 deliberation process. You said the deliberation process
5 was -- effectively was secret, correct?

6 A (No audible response)

7 Q Within the -- within the bank, you know, wasn't -- I
8 couldn't read about it in the Wall Street Journal?

9 A Correct.

10 Q You wouldn't tell me about it, --

11 A Correct.

12 Q -- right? Do you know who Barry Bekkedam is?

13 A I'm -- I'm not sure I do.

14 Q It's Barry Bekkedam right over here. Have you ever met
15 him?

16 A No.

17 Q Have you ever even heard his name before?

18 A Not to my recollection.

19 Q To the best of your knowledge nobody from the CPP ever
20 sent Mr. Bekkedam this information that was in Government
21 Exhibit 30, correct?

22 Just to the best of your knowledge, sir.

23 A They -- they shouldn't have. To the best of my knowledge
24 they didn't.

25 MR. DUNCAN: No further questions, Your Honor.

Schaffner - Redirect (Bar)

77

1 Thank you.

2 MS. BARRY: A few brief questions, Your Honor.

3 THE COURT: All right.

4 REDIRECT EXAMINATION

5 BY MS. BARRY:

6 Q Information about a bank, it -- the bank itself, is not
7 kept confidential is it, if you're -- if it's the own -- it's
8 own institution?

9 A I'm a little confused by that question.

10 Q I'm just -- I guess my point is if Nova Bank is providing
11 information to the CPP Council, that's not confidential to
12 Nova Bank, is it?

13 MR. DUNCAN: Objection; leading.

14 THE COURT: No, overruled to that question.

15 BY MS. BARRY:

16 Q You may answer.

17 THE COURT: You may answer that question.

18 THE WITNESS: So the information that -- that Nova
19 Bank provides to --

20 BY MS. BARRY:

21 Q The primary regulator.

22 A -- its primary regulator, is that confidential with the
23 primary regulator?

24 Q No. As to Nova Bank, if it gives the --

25 A Oh, no. It's a -- it's -- they are obviously privy to

Schaffner - Redirect (Bar)

78

1 their own information, yes.

2 Q Okay. That's just -- I just wanted to clarify that.

3 If we could take a look at Government's Exhibit 6,
4 just -- just wanted to make sure that we were clear.

5 And, again, this is the application, TARP
6 application, and if -- Nova Bank's TARP application.

7 MS. BARRY: If we could just put that up on the
8 screen, Agent Boyer, for the jury, and to the second page,
9 just --

10 BY MS. BARRY:

11 Q And looking at the second page, who signs on behalf of
12 Nova Bank? That signature on the bottom, if we could
13 highlight it.

14 A Brian M. --

15 Q Look like Hartline?

16 A -- Hartline. If you went back to the first page, I'm
17 sure I could have said that.

18 Q Yes.

19 A It's -- some signatures are a little idiosyncratic, so
20 it's --

21 Q Now, in terms of your work with the CPP Council, were you
22 reviewing hundreds upon hundreds of banks?

23 A At the TARP -- at my organization we were reviewing
24 hundreds of banks. The CPP Council would have been a smaller
25 group.

Schaffner - Redirect (Bar)

79

1 Q Okay. But the number of banks that you saw come across
2 your desk in terms of review were --

3 A A large number.

4 Q -- a large number.

5 Would you -- how many would you say, approximately?

6 A Hundred, 700, 800.

7 Q And, again, is the money that's coming from the Capital
8 Purchase Program free money or a gift or a grant?

9 A No. It was our expectation that the money would be
10 repaid to -- to the Government, that the preferred shares
11 would be redeemed.

12 And in fact we've received back more money than we
13 invested in -- under this program.

14 Q And I just wanted to clarify one other thing on
15 Government's Exhibit 30, please.

16 MS. BARRY: If we could show that, and to the second
17 page.

18 BY MS. BARRY:

19 Q And in that third paragraph, "just wanted to be clear
20 that it was not Mr. Bertsch, but Mr. Hunter replied that he
21 cannot say there will be -- not be further declines in value,
22 but the bank's analysis is sound.

23 He noted that if the bank receives the 15 million
24 capital injection, the depreciated securities could be charged
25 off."

Schaffner - Redirect (Bar)

80

1 A Okay. That's --

2 Q So that was Mister --

3 A That's -- that -- Mister -- that -- that says it's Mr.
4 Hunter, correct.

5 Q Not Mr. Bertsch, right?

6 A That's correct.

7 Q Do you know who Mr. Hunter was?

8 A I'm not sure. He may have been the -- a person from FDIC
9 who was presenting the matter to the Council.

10 Q Okay.

11 MS. BARRY: May I have a moment, Your Honor?

12 THE COURT: Surely.

13 MS. BARRY: No further questions. Thank you.

14 MR. EGAN: No recross.

15 MR. DUNCAN: No, thank you, Your Honor.

16 THE COURT: Thank you, sir. You may step down.
17 Watch your step, please.

18 THE WITNESS: Thank you very much.

19 THE COURT: Let's take our 15-minute afternoon break
20 at this time, please.

21 Reconvene at 3:00. Thank you.

22 (Jury out, 2:40 p.m.)

23 (Recess taken, 2:41 p.m. to 3:10 p.m.)

24 THE COURT: Counsel, do you have a master exhibit
25 list so that I can just check admitted, not admitted, as we go

Schaffner - Redirect (Bar)

81

1 along? Is it in this -- oh.

2 MR. IGNALL: Yeah, I believe we filed one yesterday,
3 Your Honor.

4 THE COURT: Oh, okay then. Fine.

5 MR. IGNALL: Maybe Karen put it in there.

6 THE COURT: I got it. Thank you.

7 MR. IGNALL: Oh, Karen, my legal assistant, is
8 awesome. She probably put one in the binders.

9 THE COURT: Yes.

10 MS. BARRY: Your Honor, just as a brief housekeeping
11 matter. We have agreed that Government's Exhibit 142 and 155,
12 which Mr. Egan was using, we have no objection to it being
13 admitted.

14 THE COURT: All right. That will be reflected in
15 the record. Thank you.

16 MS. BARRY: Thank you.

17 THE COURT: Uh-huh.

18 THE CLERK: All rise.

19 (Jury in, 3:12 p.m.)

20 THE CLERK: Ladies and gentlemen, we are back on the
21 record.

22 THE COURT: You may be seated. Good afternoon.
23 Thank you.

24 You may call your next witness.

25 MR. IGNALL: Government calls Kevin Bertsch.

Bertsch - Direct (Ign)

82

1 KEVIN BERTSCH, GOVERNMENT'S WITNESS, SWORN

2 THE CLERK: Thank you. Please sit. State and spell
3 your name for the record, please.

4 THE WITNESS: I'm sorry?

5 THE CLERK: State and spell your name into the
6 record, please.

7 THE WITNESS: Kevin Bertsch. It's K-E-V-I-N, Kevin,
8 and Bertsch, B-E-R-T-S-C-H.

9 THE COURT: You may proceed.

10 MR. IGNALL: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. IGNALL:

13 Q Mr. Bertsch, what do you do for a living?

14 A I work for the Federal Reserve Board. I'm an Associate
15 Director of the Division of Banking Supervision and
16 Regulation.

17 Q And what does that mean?

18 A That means that I -- I'm responsible for overseeing the
19 programs of our supervision of regional and community banks,
20 including savings and loan holding companies, so it's
21 basically to oversee the examination programs for banks that
22 are of a certain size.

23 Q And how long have you worked for the Federal Reserve?

24 A I've worked for the Federal Reserve for 25 years.

25 Q And what other jobs have you had with the Federal

Bertsch - Direct (Ign)

83

1 Reserve?

2 A I started my working at the Federal Reserve as an
3 examiner in the Federal Reserve Bank of Boston, and then I
4 moved to the Federal Reserve Board in Washington where I
5 worked as a policy analyst.

6 I then became the manager of the Offsite Monitoring
7 Group and then -- and then got responsibility for community
8 banks and then added regional banks in the most recent job I
9 have.

10 Q All right. And in terms of bank supervision what is the
11 role of the Federal Reserve?

12 A The Federal Reserve is the primary regulator of
13 state-chartered banks that are members of the Federal Reserve
14 system, and we also are the primary regulator for bank holding
15 companies and savings and loan holding companies.

16 Q What is a bank holding company?

17 A A bank holding company is a -- is a financial company
18 that is formed to basically hold an ownership interest in a
19 insured depository subsidiary or a bank.

20 Q And what's the relationship between the bank and the bank
21 holding company?

22 A The -- the bank is owned by the bank holding company, and
23 our role in supervising the bank holding company is to ensure
24 that it's operated in a safe and sound manner, and that it
25 does not operate in a way that harms the bank or puts

Bertsch - Direct (Ign)

84

1 depositors at risk from actions taken at the holding company
2 level.

3 Q Are you familiar with something -- it was called or is
4 still called, I guess, the Troubled Asset Relief Program?

5 A Yes, I am.

6 Q And generally what was that?

7 A The -- the part of the Troubled -- the part of the TARP
8 that I'm most familiar with is the Capital Purchase Program,
9 which was a program that the Treasury Department set up to
10 make investments in -- in viable banks with the idea that it
11 would support the banking system and bank's ability to lend.

12 Q And what do you mean, "support bank's ability to lend"?

13 A So to provide them with capital resources that they --
14 and -- and cash resources that they could on lend to borrowers
15 and, therefore, support economic activity during the time of
16 the crisis.

17 Q And you said something about viable banks. What do you
18 mean by that?

19 A Viable in the sense that they were going to remain
20 profitable, and they were going to -- going to -- be able to
21 remain in operation.

22 Q And did you have any role in this Capital Purchase
23 Program?

24 A I did. I was on -- I represented the Federal Reserve on
25 the Capital Purchase Program Interagency Council, which was a

Bertsch - Direct (Ign)

85

1 group that was put together to review or to provide advice to
2 the Treasury on proposed investments of banks that had -- that
3 presented a higher level of risk than other applicants in the
4 program.

5 Q And are you familiar with how the application process
6 worked?

7 A Yes, I am.

8 Q All right. And for an individual bank to apply did the
9 bank apply directly to the Treasury or through some other
10 means?

11 A The banks applied -- the -- the banking agencies worked
12 with the Treasury to provide a way to collect the application.

13 So the applications would go to the regulator or the
14 lead bank in the -- in the group.

15 And then the Federal Reserve also received an
16 application if there was a holding company in the structure,
17 if there was a bank holding company.

18 Q All right. And did the bank regulator have any role in
19 recommending whether a given bank should be approved or not?

20 A The bank regulator would do an analysis of the bank
21 according to the criteria that was provided by the Treasury
22 Department, and they would indicate to the Treasury Department
23 whether they thought that that bank met the criteria and
24 should receive an investment or did not.

25 Q And then who ultimately made the decision about whether a

Bertsch - Direct (Ign)

86

1 bank got this Capital Purchase Program investment?

2 A Ultimately, the decision was made by the Treasury
3 Department. It was a Treasury Department program, the TARP
4 and the CPP, and the Treasury would take whatever input they
5 got from the regulators, and they would make a decision about
6 whether to invest or not in the institution.

7 Q You mentioned earlier you're part of an interagency
8 council.

9 Can you describe to us what met and who -- meant and
10 who was on that?

11 A Yes. The Council had representatives from all of the
12 banking agencies, so it included representatives of the Office
13 of Thrift Supervision which existed at that time, the Office
14 of the Comptroller of the Currency, which supervises national
15 banks, the Federal Reserve, which I've already explained our
16 responsibilities, and the Federal Deposit Insurance
17 Corporation.

18 Q And do you know what applications went to your Council,
19 as opposed to the ones that didn't go?

20 A The ones that went to the Council either tripped a
21 threshold that -- that suggested a higher potential risk, a
22 threshold that was established by the Treasury Department or
23 had a potential rating or a part of a supervisory rating,
24 Camels rating, that was higher risk than a typical bank.

25 Q Higher risk for what?

Bertsch - Direct (Ign)

87

1 A A higher risk of -- of insolvency.

2 Q And -- and what, just to --

3 A So basically of -- so the -- the regulators assign a
4 rating to each bank when they do an examination. One is a
5 good rating, five is a bad rating. Five suggests that a bank
6 is in imminent danger of failing or having to cease operating,
7 go out of business, and if -- and in between.

8 If a bank had a rating on one of the components of
9 the Camels rating system that suggested a higher level of
10 risk, such as a three or a four, then that bank would be a
11 type of bank that would go to the Council.

12 Q And what was the Council's role when reviewing the
13 application of that type of bank?

14 A The Council's role was -- was, again, to review work that
15 had done -- been done by whatever regulator provided the
16 application and to basically come to a secondary discussion of
17 whether the -- the bank qualified as an investment or not,
18 according to the -- to the standards that Treasury set.

19 Q And did members of the Council ever deal directly with
20 someone at the bank?

21 A We did not.

22 Q All right. Did the Council ever ask for more information
23 regarding a bank?

24 A The Council would frequently ask to receive more
25 information from the primary regulator of the bank.

Bertsch - Direct (Ign)

88

1 The -- the communication with the bank was all
2 handled by the primary regulator, whoever happened to regulate
3 that bank.

4 Q All right. Now, when you sat in on -- do you participate
5 in Council meetings reviewing bank applications?

6 A I did.

7 Q And what kind of information did you review at those
8 meetings to determine if a bank was viable?

9 A So we would have a decision, a case decision memo, which
10 basically laid out the ratios that the Treasury had asked us
11 to look at and then also would have an analysis prepared by
12 the primary regulator that would give a sense of the -- of the
13 condition of the bank and the prospects going forward.

14 Q When you say "ratios," what do you mean by that?

15 A What I mean by that would be, for example, a ratio that
16 indicated the level of -- of weaker assets to total assets or
17 past -- past due or problem loans to total capital, those
18 types of ratios.

19 Q And when you say "capital," what do you mean by that?

20 A Capital is a -- basically the amount by which your assets
21 exceed your liabilities, and it's in -- in banking supervision
22 circles it's essentially the cushion that's available to
23 absorb any unexpected losses that a bank might have, either
24 because a loan goes bad or they have an operational loss or
25 anything of that nature.

Bertsch - Direct (Ign)

89

1 Q Now, in bank terms isn't a loan an asset?

2 A A loan is an asset, yes, that's correct.

3 Q But is that one of the assets that you're talking about
4 when you're including capital? You're saying about a loan
5 going bad.

6 A A loan -- a loan -- basically, a loan can go bad and have
7 to be marked down to a lower value, and to adjust for that on
8 the liability side of the balance sheet you have to basically
9 take that out of capital.

10 So capital's a cushion that's available to absorb
11 losses and assets.

12 Q All right. When you were a member of this -- and is the
13 CPP Council still in existence?

14 A No.

15 Q Okay. When you were a member of this Council, did you
16 review an application for Nova Bank?

17 A I did.

18 Q All right. And do you remember if the Council sought
19 more information regarding Nova Bank when it first got the
20 application?

21 A Yes. The Council did seek additional information on Nova
22 Bank.

23 Q And what kind of information did the Council want before
24 considering Nova Bank?

25 A The Council wanted to have better insight into the

Bertsch - Direct (Ign)

90

1 investment portfolio of the bank. The bank had some
2 investments that were in some -- that seemed to be weak, and
3 we wanted to understand better whether they were valued
4 adequately.

5 We also wanted to understand the earnings prospect
6 for the organization and whether they were going to be able to
7 demonstrate the ability to repay their current obligations and
8 also the additional obligations they would be taking on with
9 the TARP investment.

10 Q Do you remember approximately when it was that the
11 Council sought more information regarding Nova Bank?

12 A So the -- the Council, when it first discussed the
13 initial application, it asked for some additional information
14 on the investment portfolio. So it would have been the first
15 time it was discussed at the Council.

16 Q And I'm going to bring -- we've marked as Exhibit 30.
17 It's already been admitted, and we have to look at that date
18 there.

19 A Yes.

20 Q What is Exhibit 30?

21 A That is a Council review decision sheet, and the date on
22 that is June 10, 2009.

23 Q Was this decision taken after the Council asked for more
24 information?

25 A There was -- there was an initial meeting where they

Bertsch - Direct (Ign)

91

1 were -- the -- the FDIC was asked to bring more information
2 back.

3 They brought more information back at a subsequent
4 meeting, and once all the information was provided and it was
5 discussed, then the Council made a decision. So it wasn't at
6 the initial meeting.

7 Q And do you remember how -- how long before this meeting
8 the Council had asked for that more information?

9 A I don't recall specifically, but I believe it was a
10 matter of a couple of months.

11 Q All right. Now, were you a participant in the meeting
12 when the Council voted on Nova's application?

13 A I was.

14 Q And was there a discussion at this meeting about how much
15 capital Nova Bank had?

16 A Yes.

17 Q And did you or other members of the Council have concerns
18 about the amount of capital that Nova had?

19 A I think all people -- all the members of the Council had
20 concerns about the level of capital and whether there was an
21 adequate amount of capital to conclude with confidence that
22 the bank was going to be viable.

23 Q And did you have any information from the bank regulator
24 about whether Nova Bank was going to be able to raise
25 additional capital?

Bertsch - Direct (Ign)

92

1 A The FDIC indicated that there was an ability to raise
2 additional capital to put into the -- to the institution.

3 Q And did the Council vote on whether to approve Nova?

4 A It was -- yes. The Council voted after the FDIC
5 indicated there would be a additional capital available.

6 Q And what was the vote?

7 A The vote, as indicated on this exhibit, was three
8 agencies voted to approve, contingent on investment of \$15
9 million in capital, and one disapproved that.

10 Q All right. And we'll get to who that is in a minute.

11 But was there a discussion at Council about this
12 contingency?

13 A Yes, there was.

14 Q Okay. Who was the one voting no?

15 A That was me.

16 Q And what was your concern?

17 A My concern was that I didn't think even with \$15 million
18 in additional capital that -- that it was clear that this
19 institution was going to be viable and be able to repay the
20 Treasury the investment that was on the table.

21 Q But were you out-voted?

22 A Yes.

23 Q And was Nova's application then forwarded to the Treasury
24 as a result of this?

25 A Yes. The -- the decision sheet as shown here would have

Bertsch - Direct (Ign)

93

1 been forwarded to the Treasury's Investment Counsel, and they
2 would have gone through their own consideration, considering
3 all the views, including mine, which was different from the
4 majority, they would have taken into consideration.

5 Q And based on your discussions within the Council what was
6 the contingency? What did it mean to have an injection of
7 15 -- to have a capital injection of \$15 million?

8 A It was that the -- that the bank would receive -- that
9 their equity capital would be increased, essentially, through
10 an investment of \$15 million which would improve the financial
11 condition and the financial ratios of the bank and lead them
12 to be eligible for meeting the Treasury standards in a TARP
13 investment.

14 Q And what did the members of Council mean by "capital"?

15 MR. EGAN: Objection

16 THE COURT: Overruled.

17 You may answer.

18 THE WITNESS: Okay. The -- by "capital," the --
19 the agencies would -- would mean regulatory capital that would
20 come into the bank that would be available to stand ready to
21 take any unanticipated losses. That would be a cushion.

22 BY MR. IGNALL:

23 Q All right. Did you ever hear whether Nova Bank was going
24 to loan any money to this investor?

25 A I did not.

Bertsch - Direct (Ign)

94

1 Q Is that something you would remembered [sic]?

2 A I would have remembered, yes.

3 Q Why is that?

4 A Because if -- for regulatory capital there are rules
5 stipulating what can qualify for capital, and the rules
6 stipulate that a bank cannot be a source of the capital and
7 cannot, directly or indirectly, lend the -- the money that
8 becomes capital.

9 Q And why is that?

10 A And that is -- that's because it does -- if it doesn't
11 come from outside of the bank, it doesn't add any strength to
12 its capital.

13 It doesn't really -- it's not really available to
14 absorb losses because they haven't received the actual capital
15 injection.

16 Q And what if an investor borrows money from a different
17 bank?

18 A They -- they can -- they can do that, but the -- but the
19 capital transaction that is separate from that because the
20 capital would go into the bank and there would be no way for
21 the lender to get that out of the bank. That's already there
22 in the bank as capital and would be available to absorb
23 losses.

24 Q And did you have any -- let me actually turn your
25 attention to the second page.

Bertsch - Direct (Ign)

95

1 MR. IGNALL: And if we go down to that third
2 paragraph, we could blow that up.

3 BY MR. IGNALL:

4 Q Was there discussion at the Council meeting about whether
5 this \$15 million capital injection would improve how well
6 capitalized the bank was?

7 A Yes, there was.

8 Q All right. And did you still have a concern about that?

9 A I still had a concern in that I didn't feel that the 15
10 million was sufficient.

11 And I also, as -- as is pointed out in this
12 paragraph, noted as information that would be important for
13 the Treasury to know, that the Federal Reserve had downgraded
14 the holding company and had questions about whether the
15 holding company would be in a position -- whether we would
16 approve them making dividend payments on the TARP investment.

17 Q Did you have any involvement in the supervision and,
18 indeed, of the application of Nova Bank after this June
19 meeting?

20 A No.

21 Q Were -- was any of the Federal Reserve involved in
22 supervising the Nova Bank holding company?

23 A Yes. The Federal Reserve Bank of Philadelphia would have
24 handled the supervision of the holding company.

25 Q And after this recommendation got referred to Treasury to

Bertsch - Cross (Ega)

96

1 allow Nova Bank's TARP application to go forward did, as far
2 as you know, the Council ever reduce that \$15 million capital
3 contingency?

4 A No. I only have what was voted on on the day, as you see
5 here. That would have been the -- the number I understood.

6 MR. IGNALL: One moment, Your Honor.

7 THE COURT: Yes, sir.

8 MR. IGNALL: No further questions. Thank you.

9 THE COURT: You may cross examine.

10 MR. EGAN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. EGAN:

13 Q Good afternoon, Mr. Bertsch.

14 A Hi.

15 Q So in 2009, or '08 and '09 is when all this went on, you
16 were in what position?

17 A I was a Deputy Associate Director with responsibility for
18 community banks and off-site monitoring at the Federal
19 Reserve.

20 Q So when you went through your experience, you now have a
21 new job where you have more responsibility.

22 A I'm sorry, I'm not --

23 Q You had said you were -- you covered something along with
24 community banks now, but that -- that's after this date.

25 A I'm not sure I -- I had -- I was responsible for

Bertsch - Cross (Ega)

97

1 community bank supervision at the time I was working on -- on
2 this. My responsibilities have changed since then.

3 Q And they -- and they're no longer community banks, or
4 they're community banks --

5 A They include --

6 Q -- and something else?

7 A -- community banks, and they include regional banks.
8 They no longer include the off-site monitoring.

9 Q I see.

10 A That's the change.

11 Q And community banks are basically smaller banks, right?

12 A That's correct.

13 Q Not like Wells Fargo, CitiBank, they're not community
14 banks, right?

15 A That's correct.

16 Q And as the Federal Reserve Board you oversaw the holding
17 company, Nova Financial Holding Company.

18 A That's correct.

19 Q And before you had your present job, I believe you said
20 you started out as a bank examiner, correct?

21 A That's correct.

22 Q And as a bank examiner you were one of the people on the
23 ground who go into banks and do examinations.

24 Q Yes, that's correct.

25 Q And in fact those examinations are done regularly,

1 correct?

2 A They are, yes.

3 Q And a bank examiner goes into a bank once a year, once
4 every nine months, depending on the health of the bank, right?

5 A It's, yeah, once a year or once every 18 months or more
6 frequently in certain cases.

7 Q And the bank examiner is given access to all the bank
8 records and books, correct?

9 A Yes, they are.

10 Q And they have basically more than one person on the
11 scene.

12 A That's correct.

13 Q And they have access to the bank personnel to ask them
14 questions about where documents are and what they need,
15 correct?

16 A That's correct.

17 Q And do you recall that during the period of time when
18 this application was under review that there was a bank
19 examination of Nova?

20 A I was aware that the, yeah, that there was a holding
21 company inspection of Nova.

22 Q And in fact that holding company inspection was one of
23 the reasons that you voted against this particular TARP
24 approval, correct?

25 A The -- the findings that had some bearing, yes.

Bertsch - Cross (Ega)

99

1 Q And the reason they had some bearing was because as a
2 result of that inspection, which took place before June 10th
3 of 2009, as a result of that inspection the holding company's
4 going to be downgraded to a three, right?

5 A Yes.

6 Q And that meant they couldn't pay dividends.

7 A It didn't mean they couldn't pay dividends. They -- they
8 were -- they were placed under an enforcement action that
9 would have required them to get approval to pay dividends from
10 the Federal Reserve.

11 MR. EGAN: We could go back to Government 30, and if
12 we could go to the third --

13 BY MR. EGAN:

14 Q And that, sir, is obviously the minutes from this
15 meeting.

16 A Uh-huh.

17 Q This was not the first meeting that you had with regard
18 to Nova Bank, correct?

19 A Yes, that's correct.

20 Q There was a meeting that was had back in like April.

21 A I believe that's correct.

22 Q And there would have been a very similar document to this
23 from that meeting in April, correct?

24 A I don't believe we voted in that meeting in April.

25 Q You did. You abstained, and -- or you decided to ask for

Bertsch - Cross (Ega)

100

1 more information.

2 A Okay.

3 Q Right? That's your recollection, isn't it?

4 A My recollection is we did, but I don't know if we filled
5 out this form. That's all I'm telling you.

6 Q Good point. But before you even get to this form, the
7 FDIC has already come to a conclusion and recommended it
8 themselves, correct?

9 A Before we get to this form?

10 Q Yeah.

11 A Yeah, they prepared a case decision member that -- memo
12 that suggested that it could be approved as an investment.

13 Q Right. So there's a case decision memo that's prepared
14 by the FDIC, and that then goes to Treasury, right?

15 A Correct.

16 Q And then if Treasury doesn't look at it and say approve
17 it right away, they say they want this group to look at it,
18 right?

19 A Correct, yeah.

20 Q And that case decision memo, which was done by FDIC
21 before the first meeting in April, right, already recommended
22 approval, did it not?

23 A Yes.

24 Q So that recommendation that FDIC made for approval prior
25 to April of 2009 was not based on anything having to do with

Bertsch - Cross (Ega)

101

1 any capital injection, correct?

2 A I'm sorry. Could you repeat that?

3 Q Sure. It was a long question.

4 That approval of the FDIC, the recommendation to you
5 to approve this, that you looked at in April of 2009 when you
6 had your meeting, that was not based on anything having to do
7 with a capital injection, correct?

8 A Yes, that's correct.

9 Q So basically the FDIC's already on board at that point,
10 right?

11 A I can only go by what they said in the memo. Yes, they
12 were on board.

13 Q Okay. Fast forward to June, right, we have a meeting.
14 You're at it, correct?

15 A Yes.

16 Q And at that meeting you are the person who says we should
17 not do this, correct?

18 A I was -- yes, that's correct.

19 Q Right.

20 MR. EGAN: And then now if we could go to page three
21 of this document

22 BY MR. EGAN:

23 Q And the last sentence of that paragraph, it says, "After
24 conferring with Ms. Course, Mr. Bertsch corrected his earlier
25 statement that a review of the holding company was pending,

Bertsch - Cross (Ega)

102

1 noting that Ms. Course had informed him that the FRB..., "
2 that's the Federal Reserve Board, right?

3 A Yeah, Federal Reserve --

4 Q You guys. "...had recently completed the inspection of
5 the holding company and will be rating it a three..."

6 Now, a three doesn't mean they're going to fail
7 tomorrow, right?

8 A That's correct.

9 Q Three means they're kind of like not doing the greatest.

10 A That's correct.

11 Q All right. "... and is planning to impose dividend
12 restrictions on the holding company," correct?

13 A Correct.

14 Q And by imposing dividend restrictions on the holding
15 company you would then make it not possible for that holding
16 company to pay its stockholders' dividends.

17 A It could. It -- it could be that they would be approved,
18 or it could be that they wouldn't be approved. They just have
19 to ask for approval.

20 Q And based on your understanding of this examination and
21 your understanding of the condition of that bank, your
22 expectation, sir, would be that that approval would not be
23 given, correct?

24 A Repeat that for me, please.

25 Q I'll put it this way.

Bertsch - Cross (Ega)

103

1 If it was up to you to give that approval, you
2 wouldn't be giving that approval, would you?

3 A I think I indicated that I didn't give that approval.

4 Q Right. So your concern here is obviously that if the
5 TARP funds are invested, the way that the TARP gets paid back
6 is by these dividends, correct?

7 A That's correct.

8 Q And if they can't pay dividends, they can't pay back the
9 TARP, correct?

10 A They -- yeah that's correct. They --

11 Q And obviously that's a pretty good reason not to give it
12 to them, I would think, right?

13 A That would be the Treasury's decision, but that could be
14 the decision they come to.

15 Q And it was certainly your opinion.

16 A It was my opinion after listening to the information that
17 was provided.

18 Q And that was your opinion on June 10th before any capital
19 was injected into the bank.

20 A That's correct, although I did listen to the arguments
21 for --

22 Q Sure.

23 A -- including the capital and listened to the additional
24 information.

25 Q Of course. And at the end of the day in December when

Bertsch - Cross (Ega)

104

1 Treasury denied TARP funds to the bank, you're aware, are you
2 not, that the basis was, among other things, that the bank
3 couldn't pay dividends because of that restriction?

4 A That could have been the basis. I'm not sure exactly
5 what the basis was that that decision was made.

6 Q Well, we can look at that in a minute.

7 MR. EGAN: If we could have Government Exhibit 34,
8 please, and just for the witness, please.

9 BY MR. EGAN:

10 Q Sir, could you take a look at Government Exhibit 34? And
11 that is a letter dated June 17, 2009.

12 Are you familiar with that?

13 A I -- this -- I recognize this as a letter, but I'm not
14 familiar with this particular letter.

15 Q Well, it's from the Federal Reserve Bank, correct?

16 A It is.

17 MR. EGAN: And if we could go to page two for the
18 witness, please.

19 BY MR. EGAN:

20 Q And it's signed by a guy named A. Reid Raymond.

21 Do you know him?

22 A Yes, I do.

23 Q And who's he?

24 A He's a Vice President at the Federal Reserve Bank of
25 Philadelphia.

Bertsch - Cross (Ega)

105

1 Q Right, and that's the same bank that you're -- you work
2 for, as well, right?

3 A I work for the Federal Reserve Board.

4 Q Oh, you know, I -- I'm sorry. I apologize. I get these
5 things confused.

6 Anyway, if you go up to paragraph three there, see
7 it, redemption of stock, that's what you were just talking
8 about, right, that NFH, Inc. shall not directly or indirectly
9 purchase or redeem any shares of its stock -- stock without
10 the prior written approval of the Reserve Bank, correct?

11 A That's -- no. That's not what I'm saying.

12 Q You know what. I'm wrong. You want to go to paragraph
13 one on page one. I'm -- I apologize.

14 That's what you're talking about, the dividends.
15 And that was your concern, was it not?

16 A That was my concern, but that was not -- that was not
17 incompletely my concern, nor was it the only -- was it not --
18 the TARP Council itself had concerns about the capitalization
19 of the bank.

20 Q Right.

21 A So there were -- there were multiple issues involved.
22 The dividends were one of them, and in the -- in the case --
23 we were bringing to the attention of the Treasury that there
24 was a dividend -- potential dividend restriction in place.

25 Q And you --.

Bertsch - Cross (Ega)

106

1 MR. EGAN: Thank you. You can take that down.

2 BY MR. EGAN:

3 Q And you were also concerned about the fact that the bank
4 was not well capitalized, right?

5 A Yes.

6 Q And in fact an inspection -- or, actually, there was an
7 action that was taken as a result of some securities that had
8 been invested. The bank had -- had on its balance sheet that
9 caused it to not -- no longer be well capitalized.

10 You're familiar with that? Remember that?

11 A Somewhere in the sequence there was a -- the FDIC went
12 back and looked at the securities and found some accounting
13 issues that they needed to be -- that needed to be addressed
14 that resulted in some losses and, I believe, had that effect
15 on the capital.

16 Q And those weren't securities in Nova Bank. Those were
17 securities that Nova Bank had on its balance sheet that
18 belonged to other people, correct?

19 A Those -- those were investments of the bank.

20 Q In other companies.

21 A In other companies.

22 Q Correct. And it wasn't anything having to do with the
23 raising of capital or anything like that, but it was, rather,
24 the fact that these securities were downgraded that caused
25 Nova to become no longer well capitalized, right?

Bertsch - Cross (Ega)

107

1 A It's my understanding that those were the primary issue.

2 I believe there were also some other asset quality
3 issues that surfaced at that time.

4 Q And none of that had anything to do with this capital
5 injection, correct?

6 A No.

7 Q But that was another reason why you were opposed to
8 voting for it.

9 A I was concerned about whether the degree of problems had
10 been identified and whether the institution would ultimately
11 be viable.

12 Q Now, you testified on direct about regulatory capital,
13 and in your testimony you said that regulatory capital can not
14 include funds that come from a loan that the bank has made
15 because there are rules that stipulate that that can't be.

16 A That's correct.

17 Q Do you want to point us to where those rules are?

18 A Sure. They're in the Regulatory -- the Regulatory
19 Capital Rules under the definition of "capital."

20 Q And that, sir, is published in what?

21 A That would be published in examination materials, in
22 regulations that are promulgated by the agency.

23 So the FDIC promulgates a capital rule, as does the
24 Federal Reserve. And those capital rules are substantially
25 the same, and they indicate that a bank cannot directly or

1 indirectly be the source of -- fund the source of capital.

2 Q And that is in -- in conjunction with a note, correct?

3 A I'm sorry?

4 Q And that's in conjunction with a note, correct?

5 A That's in conjunction with the -- the bank itself should
6 not ultimately be the source of a capital. It can't create
7 the capital. Capital has to come from outside the bank.

8 Q And, indeed, when an investor invests in the bank money
9 that the investor has borrowed, that is his money, correct?

10 A Not -- not if he received the money from the bank he's
11 investing it in.

12 Q And you --

13 A It would -- it would not qualify as regulatory capital.

14 Q And that is not a statute, correct?

15 A That is a regulation, a capital rule that was set out
16 for public comment.

17 It would be a part of Regulation H for state member
18 banks, and the FDIC would have their own regulation on it.

19 Q Now, sir, when you reviewed this application, this TARP
20 application, did you have any knowledge or any concern about
21 that issue?

22 A I had no knowledge of it. All -- the only information I
23 had was what you saw on the -- on the document that said this
24 was approved by some Council member's contingent on injection
25 of 15 million in capital. That's all the information I had.

Bertsch - Cross (Ega)

109

1 Q And your denial was not based in any way, shape or form
2 on that capital injection.

3 A It -- it was not based -- I basically, as -- as the
4 minutes were indicate, concluded that it -- 15 million would
5 help, but I wasn't sure it was enough.

6 Q And the denial that you entered or that you voted for in
7 June of 2009 ultimately turned out to be the basis for the
8 denial of the Treasury.

9 A I don't believe that's the case because I believe,
10 ultimately, the FDIC conducted a later exam and came to the
11 conclusion that there were some concerns about the bank, and
12 they had a vote, I believe, in December to ultimately withdraw
13 the application.

14 MR. EGAN: If we could have Government 139, please.

15 BY MR. EGAN:

16 Q Sir, if you look at the lower part of that e-mail, it's
17 from a Cynthia Course -- and you're familiar with her,
18 correct?

19 A Yes, I know Cynthia.

20 Q And you're copied on it?

21 A Yes, I am.

22 Q And that e-mail states that the -- and we're talking
23 December 14th of 2009, "I understand from the Reserve Bank
24 that Nova Bank has called the FDIC plan for this afternoon to
25 discuss its capital raising, vis-à-vis its TARP application."

Bertsch - Cross (Ega)

110

1 See that?

2 A Uh-huh.

3 THE COURT: Yes or no, please.

4 THE WITNESS: I see it, yes.

5 MR. EGAN: And can we publish this?

6 MR. IGNALL: I don't think it's been admitted, but
7 we have no objection to admitting it.

8 MR. EGAN: I move the admission of 139.

9 THE COURT: Admitted.

10 BY MR. EGAN:

11 Q And, sir, if you look at it, it says, "On June 10, 2009
12 the Interagency Council approved Nova's TARP application,
13 contingent on a 15 million capital raise."

14 See that?

15 A I see it.

16 Q And it says, "Treasury has confirmed that Nova raised the
17 capital this year, and they now need to raise just ten --
18 earlier this year, and they now need to raise just ten
19 million."

20 Now, if you go down to the second paragraph in bold,
21 it says, "Nova has been deferring interest payments on its
22 trust-deferred securities so currently would not be allowed to
23 pay dividends on any TARP CPP security issue."

24 So that means that you would not -- they would not
25 be able to pay dividends.

Bertsch - Cross (Ega)

111

1 A It does not mean they -- that does not necessarily mean
2 that as -- as Cynthia goes on to explain that the Reserve Bank
3 cannot opine on whether it would allow them to pay interest
4 without additional information on how the capital would affect
5 the bank.

6 Q But, sir, you would agree with me that they're not going
7 to give TARP funds if they don't know if they're going to be
8 able to pay dividends.

9 A They may or they may not. That decision was not up to
10 me. Certainly, I would -- I would imagine that would weigh
11 into Treasury's decisions, but I don't know that it -- I don't
12 know that it would ultimately decide.

13 MR. EGAN: And if we could have Government 142,
14 please. It's already been admitted.

15 BY MR. EGAN:

16 Q And this is between Joe Wilcox and Cindy Course? And
17 they're Government employees, correct?

18 A They're Federal Reserve Bank employees, Federal Reserve
19 Bank of Philadelphia.

20 Q And if you see paragraph four, last paragraph in the
21 bottom, "The FDIC will not recommend that Treasury fund the
22 TARP application for an adequately capitalized bank that is
23 already restricted from servicing the dividend on their
24 investment."

25 A I see that, yes.

Bertsch - Cross (Ega)

112

1 Q And that's the issue that you raised in June, correct?

2 A That is an issue that I raised in June, yes.

3 Q And is basically saying here the FDIC will not recommend
4 the bank because of that, correct?

5 A Well, it says that, but the FDIC had previously
6 recommenced the bank under exact same circumstances.

7 Q And in spite of the fact that the \$15 million had been
8 raised, denied it on that basis, anyway, correct?

9 A I'm not sure if this is the definitive explanation for
10 why the FDIC did not approve it.

11 Q Okay.

12 MR. EGAN: If we could have Government 150, please.

13 BY MR. EGAN:

14 Q And, sir, if you could look at that. It's an e-mail that
15 is from Cynthia Course to you, correct?

16 A That's correct.

17 Q And you're familiar with this document, obviously?

18 A Yes.

19 Q Okay.

20 MR. EGAN: Move for the admission of 150.

21 MR. IGNALL: No objection.

22 THE COURT: Admitted.

23 MR. EGAN: Publish it, please.

24 BY MR. EGAN:

25 Q And Ms. Bertsch -- Ms. Course, excuse me, writes to you,

Bertsch - Cross (Ega)

113

1 "Kevin, this is a notational vote to deny Nova's financial
2 TARP CPP application," correct?

3 A Correct.

4 Q So it's dated December 17th, and they are telling you
5 this is being denied, correct?

6 A I'm sorry?

7 Q It's a e-mail to you telling you the application's being
8 denied, correct?

9 A That's not exactly what it is. It's a -- it's a --
10 Cynthia is letting me know that -- that the Treasury has asked
11 for a notational vote on this transaction. She's explaining
12 what the -- the vote, given -- bringing me up to date on
13 information.

14 And she's noting here that the situation with the
15 capital, as you described, but she's also indicating that the
16 bank's condition has deteriorated since approval, which was
17 frequently a reason for -- for banks to not receive TARP
18 investment if the FDIC's preliminary exam ratings are three
19 four two four three two three (phonetic) in an MOU as
20 contemplated.

21 So that would be -- and as it -- goes on to indicate
22 that the FDIC was preparing a new decision memo to present
23 their new view on the -- on the investment where they were
24 recommending denial.

25 All of us would have had to fill out a notational

1 vote, so all of the agencies, there would have to be a
2 document that would show each of the agencies' perspectives on
3 why they denied the vote --

4 Q Right.

5 A -- or why they --

6 Q And the reason she's --

7 A -- why they took the position.

8 Q -- telling you this is 'cause now there's going to have
9 to be another vote, but they've pretty much already decided
10 it's going to be a vote to deny, correct?

11 A Well, they haven't decided anything, other than the fact
12 that the FDIC has indicated that it's going to recommend
13 denial, which, typically, if the primary regulator was going
14 to recommend denial, would result in people voting to deny.

15 Q Let's read the first sentence.

16 "This is a notational vote to deny Nova's financial
17 TARP CPP application."

18 That does not say this is a vote to deny?

19 A That does say that, yes.

20 Q Okay. What, you're saying that's wrong?

21 A I'm -- I'm saying that my reading of this is that we were
22 asked to prepare a notational vote that the FDIC was
23 recommending a denial, and that's probably why Ms. Course
24 wrote to deny the application.

25 Because, typically, if the primary regulator was not

Bertsch - Cross (Ega)

115

1 supportive of it, it would be rare for all the other agencies
2 to support it, as well.

3 Q So now FDIC, who was supportive to begin with, before any
4 mention of any raise of capital, nine or ten months later is
5 now no longer supportive. It's what this is telling you.

6 A Yes. And it indicates that the FDIC conducted a
7 preliminary examination --

8 Q Right.

9 A -- and it's seen additional deterioration.

10 Q And it's telling you why. I have no -- no quibble with
11 that. It's telling you why they've changed their mind, right?

12 A Yes.

13 Q And they've changed their mind for a couple reasons.
14 One, the bank examiners, like we discussed earlier, have gone
15 in and examined and decided things don't look all that great.
16 They have got worse ratings now so let's deny them. That's a
17 reason, right?

18 A Right.

19 Q It's --

20 A Yes.

21 Q -- talking about what you raised from day one, they're
22 not going to be able to pay any of these dividends, correct?

23 A Yes, and that would be because of the condition of the
24 bank.

25 Q Right. And all of these reasons that it raises, saying

Bertsch - Cross (Ega)

116

1 we're not going to give them this money, every single one of
2 them, right?

3 None of them have anything to do with the \$15
4 million capital raise, do they.

5 A I -- not that I can see in this --

6 Q No. It's in spite of the \$15 million capital raise we're
7 not going to give them any money, isn't it?

8 A It -- it -- the 15 million is not entering into the
9 decision here.

10 Q Correct. So basically the decision to deny these funds
11 was completely unrelated to the \$15 million capital raise.
12 Right?

13 A I -- could you repeat again what you're --

14 Q Sure. The decision to deny TARP to Nova that you just
15 read about right here, and we can read the next one, too, if
16 you want, had nothing to do with the \$15 million capital
17 raise.

18 A Well, the 15 million -- what confuses me about the
19 question is the \$15 million mitigates the negative issues to
20 some degree. So it would have been a positive.

21 It didn't enter in as a --

22 Q Correct. It didn't --

23 A -- as a --

24 Q -- enter in to the decision.

25 A It didn't enter in.

Bertsch - Cross (Ega)

117

1 Q Your words. Didn't enter in to the decision.

2 A Well, it didn't -- it didn't offset the negative factors
3 that raised questions about it meeting the Treasury's
4 investment criteria.

5 MR. EGAN: If we could have Government 155, please.

6 BY MR. EGAN:

7 Q And, sir, are you familiar with that document?

8 A Yes. This is a case decision memo for Nova Bank.

9 Q And up in the right it says December 18, 2009, correct,
10 in handwriting?

11 A Yes, it does.

12 Q An IC meeting, number two agenda item. That means on
13 December 18, 2009 you got together and -- and had a meeting
14 about this, correct?

15 A I'm not sure what that means. I -- IC would be
16 Investment Committee. I wasn't on the Investment Committee.

17 Q Okay. But if you could go to page three, and you see
18 where it says, "Recommendation is denial."

19 Explains all the reasons why they're denying this,
20 correct?

21 A Yes.

22 Q And basically says it's despite the positive information
23 received from management, correct?

24 MR. IGNALL: I'm going to object to asking this
25 witness to count on a document that he didn't have any

Bertsch - Cross (Dun)

118

1 participation --

2 THE COURT: Sustained.

3 MR. IGNALL: -- in preparing.

4 THE COURT: Sustained.

5 MR. EGAN: Very well.

6 May I have a moment, Your Honor?

7 THE COURT: Surely.

8 (Pause)

9 MR. EGAN: No -- nothing further, Your Honor.

10 MR. DUNCAN: I'll be brief, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. DUNCAN:

13 Q Good afternoon, sir.

14 A Good afternoon.

15 Q Sir, where is your office located?

16 A Washington, D.C.

17 Q And you've been there since -- did you say 1993?

18 A Yes.

19 Q During all the time you've worked for the Federal
20 Government have you ever met Barry Bekkedam?

21 A No, I have not.

22 Q Have you ever spoken to Barry Bekkedam?

23 A No, I have not.

24 Q Ever communicated in any way with Barry Bekkedam?

25 A No, I have not.

Bertsch - Redirect (Ign)

119

1 Q You -- you told the Government when they asked you during
2 one of your interviews, you'd said that you'd never even
3 spoken directly with any representatives of Nova, is that
4 correct?

5 A That's correct.

6 Q Sir, what's a notational vote?

7 A What's a notational vote?

8 Q Yeah, I've always wanted to know. I just don't know.

9 A It -- it's -- it's a vote when the material --
10 information is provided to you, and then you indicate whether
11 you vote yes or no in writing, and then that's provided to a
12 collector of votes, and they tally up the votes and decide how
13 the folks voted.

14 Q Sort of like a caucus?

15 A No. I mean I don't -- I don't know exactly, but no.
16 It's basically each person individually voting based on a same
17 package of information.

18 Q Okay. Thank you very much, sir.

19 MR. DUNCAN: No further questions. Have a good day.

20 MR. IGNALL: Like to show -- this is just for the
21 witness, Agent Boyer, Exhibit 16.

22 REDIRECT EXAMINATION

23 BY MR. IGNALL:

24 Q And do you see that on your screen? I don't see it on
25 mine yet, so --

Bertsch - Redirect (Ign)

120

1 A Yes.

2 Q All right. Do you recognize what Exhibit 16 is?

3 A This -- this looks like it's a file copy of notation
4 votes for the April 10th cases of the TARP Council, TARP TPP
5 Council.

6 Q All right. And if we'd flip to the second page, can you
7 tell whether Nova was one of the banks you considered on April
8 10th?

9 A Yes.

10 Q All right.

11 MR. IGNALL: At this point Government moves into
12 evidence 16.

13 MR. EGAN: No objection.

14 THE COURT: You may proceed.

15 BY MR. IGNALL:

16 Q If I could flip you to -- it looks like it's probably
17 the -- I think it's the fifth page.

18 A No.

19 Q The page that ends in 5-4, so probably would be the fifth
20 page.

21 Do you -- do you remember what the day was now that
22 the Council requested more information regarding Nova's
23 application?

24 A Do -- do I recall the date?

25 Q Yes. Does this help refresh your recollection?

Bertsch - Recross (Ega)

121

1 A Yeah, it does refresh my recollection in that -- in the
2 initial notation vote on whether this should go to Council.

3 I raised several questions, as I believe some of the
4 other agencies did, as well, asking for more information.
5 There was then a meeting, and it was -- and even additional
6 information was requested after that.

7 Q And when you and other members of the Council asked for
8 additional information after this April 10 meeting, who'd
9 you -- who'd you seek the information from?

10 A The FDIC.

11 Q All right.

12 MR. IGNALL: One moment, Your Honor.

13 THE COURT: Yes, sir.

14 MR. IGNALL: I have nothing further. Thank you,
15 Your Honor.

16 MR. EGAN: May I briefly, Your Honor?

17 THE COURT: Surely.

18 MR. EGAN: Thank you.

19 RECROSS-EXAMINATION

20 BY MR. EGAN:

21 Q Mr. Bertsch, I'm going to stay on that document,
22 Government 16.

23 This document is the -- basically the recordation of
24 the meeting you and I discussed, which was the first meeting
25 where they put off the decision, correct?

Bertsch - Recross (Ega)

122

1 A That -- that -- I believe in my understanding, yes.

2 Q Right. And if you go --

3 A That -- that -- the sequence of events was a little --
4 there -- there was an initial review of the case decision memo
5 as I recall -- I mean of the case decision memo which was a
6 notation vote which did not necessarily involve a face-to-face
7 meeting.

8 Then there was a face-to-face meeting where we had
9 requests for -- where we had a presentation by the FDIC, could
10 listen to the information they provided, and there was a
11 request for some additional information. And I believe there
12 was one or two other meetings, and I apologize.

13 I get -- it's been a long time. I get confused
14 between what meeting was what meeting.

15 Q And it has been a long time.

16 And certainly your Council didn't have to all be in
17 the same room to have a meeting, right. I mean you could --
18 you could vote, talk over the phone and -- I mean they didn't
19 have to bring everybody to Washington every time you guys
20 wanted to deal with something, right?

21 A No. We -- we tended to meet -- when we discussed the
22 most difficult cases, we did meet face to face, but we did a
23 lot of initial viewing of the information through notation
24 vote.

25 Q Sure, understood, and that's what -- so that's what this

Bertsch - Recross (Ega)

123

1 is. That's why the confusion. There wasn't actually a
2 meeting, is that --

3 A Yes.

4 Q -- what you're saying? Okay. Got it.

5 But -- but there was a review and a discussion and a
6 notational vote on April 10th of 2009, right, 'cause that's
7 what this says.

8 A Yes.

9 Q All right.

10 MR. EGAN: So we go to page five, please.

11 BY MR. EGAN:

12 Q And once again, this is after the FDIC's already said we
13 ought to do this, right?

14 A Yes.

15 Q And --

16 A The FDIC had prepared a first case decision memo where
17 they said yes, they recommended approval.

18 Q And by the way, their recommendation, that doesn't really
19 accomplish anything because until the Treasury signs off we're
20 actually doing this, the whole thing is basically contingent.

21 A Yeah, it's a recommendation to Treasury, and then
22 Treasury has its own process where they made a decision about
23 whether to invest. And it was a Treasury program, so Treasury
24 was the ultimate decider of --

25 Q Right.

Bertsch - Recross (Ega)

124

1 A -- the criteria and ultimately what was invested in and
2 what was not.

3 Q Right. And so actually these were all just
4 recommendations.

5 A Yes.

6 Q Until December when they said no.

7 A Well, the -- the Council would have recommended denial.
8 The Treasury would have ultimately had to deny.

9 Q I see. If we go to this page, this is your -- what you
10 have to say, right?

11 A That's correct. That's my initial --

12 Q And --

13 A -- question.

14 Q And April 16th, again, you said deny, correct?

15 A I said -- as -- as you see, basically, if you indicated a
16 denial, if you see that asterisk up above, it says cases with
17 deny or need more information will be referred to CPP Council.

18 Q Right.

19 A That means there would be a meeting, face-to-face
20 meeting.

21 Q All right. But --

22 A So indicating deny would be indicating I need more
23 information to understand this. Without other information I
24 would recommend deny.

25 Q So you're saying deny doesn't mean deny?

1 A Well, it -- it means deny.

2 Q Oh, that's what I thought.

3 A But it -- but it -- but basically if they brought
4 information that -- that supported the viability of the
5 institution and answered the questions that I had to a
6 satisfactory basis, then I might have approved. And in some
7 cases some were approved.

8 Q Well, I don't know. Wouldn't you call that changing your
9 mind?

10 A I would call that reacting to new information --

11 Q Right.

12 A -- that wasn't provided in the case decision memo.

13 Q Of course. Nothing -- nothing wrong with that, just --
14 but if you say deny today and you say approved tomorrow,
15 that -- that means something changed your mind, right?

16 A That means you received additional information, and --
17 and that changed your understanding of the circumstances.

18 Q Got it. And you deny -- you -- you recommended deny on
19 this document. That's what it says, right?

20 A Yes.

21 Q And you gave a brief explanation, and all of those
22 reasons that you gave as explanations were known to you in
23 April of 2009, correct?

24 A Yes.

25 Q Based on the examinations that your group had done and

1 the FDIC had done and everything you had read, correct?

2 A Based on the information provided by the FDIC and based
3 on, you know, things like the Uniform Bank Performance Report
4 and information that was provided on the bank, this is what I
5 saw.

6 Q And -- and nothing changed your mind about that
7 throughout this whole process. You always stayed deny.

8 A I always did, yes.

9 Q Right. Now, I asked you a question about where you found
10 the -- the rule that -- that you talked about with regard to
11 capital, and I think you said in the Examination Manual,
12 correct?

13 A It would be in -- it would be in, as I said, for state
14 member banks it would be in Regulation 8 -- H in the Capital
15 Adequacy Guideline.

16 Q And that's an Examination Manual, correct?

17 A The Examination Manual would reference Regulation H.

18 Q Right. And the Examination Manual is an internal FDIC
19 document, correct?

20 A The Federal Reserve -- I can't speak for the FDIC's,
21 although I believe their FDIC manual is public. The Federal
22 Reserve's Examination Manual is a public document, as is
23 Regulation H.

24 Q It's a manual that's for the examiners, correct?

25 A It's for the examiners, but it's also available for

Bertsch - Recross (Ega)

127

1 bankers, so bankers understand how we approach examinations
2 and how we would -- what we would be looking at. It's
3 basically a matter of transparency.

4 And the same thing with regulations. Regulations
5 would have to be available to the public for the banks to be
6 able to -- to follow them, and so they're -- they've always
7 been public, so --

8 Q Your testimony is that the Examination Manual is not a
9 private FDIC document.

10 A I said I can't speak to the --

11 Q You don't know.

12 A -- FDIC. I work for the Federal Reserve.

13 But it's my understanding that the FDIC manual is
14 public. I believe you could go on the FDIC website --

15 Q Sir --

16 A -- and find it.

17 Q -- my question is do you know whether or not it is or
18 not.

19 A I don't. I'm just --

20 Q Thank you.

21 A But I do know --

22 MR. EGAN: I have no further questions, Your Honor.

23 THE WITNESS: I do know the Federal Reserve's is
24 public.

25 MR. IGNALL: May I follow up on one thing -- or Mr.

Bertsch - Further Redirect (Ign)

128

1 Duncan --

2 MR. DUNCAN: Oh, no, nothing further. Thank you,
3 Your Honor.

4 THE COURT: All right. Yes, sir.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. IGNALL:

7 Q At the time of that April 16th meeting that Mr. Egan just
8 spoke about did the Council have any information about an
9 additional investor injecting new capital into the bank?

10 A No, that was a later development.

11 Q Okay.

12 MR. IGNALL: No further questions. Thank you.

13 MR. EGAN: Nothing further, Your Honor.

14 MR. DUNCAN: No, thank you, Your Honor.

15 THE COURT: Anything further?

16 UNIDENTIFIED ATTORNEY: No, Your Honor. Thank you.

17 THE COURT: All right.

18 Thank you, sir. You may step down. Watch your
19 step, please.

20 All right. It is approximately 4:15, and kind of
21 like those very first days of school, you want to get out a
22 little early. Let's get out a little early.

23 Please keep in mind that you cannot discuss the
24 testimony you've heard amongst yourselves nor with anyone
25 else. Don't do any investigation or research on your own and

Bertsch - Further Redirect (Ign)

129

1 avoid us like the plague.

2 Have a good evening. We'll see you tomorrow morning
3 at 9:15. Thank you.

4 THE CLERK: All rise.

5 (Jury out, 4:11 p.m.)

6 THE COURT: We are adjourned. Thank you.

7 ALL ATTORNEYS: Thank you, Your Honor.

8 (Proceedings concluded, 4:12 p.m.)

9 * * * * *

C E R T I F I C A T I O N

I, Tara Martin, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Tara Martin
Digitally signed by Tara Martin
DN: cn=Tara Martin, o, ou,
email=dianadiana@comcast.net, c=US
Date: 2016.04.11 15:54:21 -04'00'

TARA MARTIN

DATE

DIANA DOMAN TRANSCRIBING, LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA) 14-CR-0548
)
 vs.)
)
BRIAN HARTLINE and)
BARRY BEKKEDAM,) Philadelphia, PA
) March 30, 2016
) 9:30 a.m.
 Defendants.)

TRANSCRIPT OF TRIAL (DAY 2)
BEFORE THE HONORABLE C. DARNELL JONES, II and JURY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: DAVID J. IGNALL, ESQUIRE
 ASSISTANT UNITED STATES ATTORNEY
 UNITED STATES ATTORNEY'S OFFICE
 615 Chestnut Street, Suite 1250
 Philadelphia, PA 19106

For the Defendant PATRICK J. EGAN, ESQUIRE
Brian Hartline: FOX ROTHSCHILD LLP
 2000 Market Street, 10th Floor
 Philadelphia, PA 19107

For the Defendant MICHAEL J. ENGLE, ESQUIRE
Barry Bekkedam: GREENBLATT, PIERCE, ENGLE,
 FUNT & FLORES
 123 South Broad Street, Suite 2500
 Philadelphia, PA 19109

RUSSELL D. DUNCAN, ESQUIRE
SHULMAN, ROGERS, GANDAL,
PORDY & ECKER, PA
12505 Park Potomac Avenue
Potomac, MD 20854

Audio Operator: CARL HAUGER

Transcribed by: DIANA DOMAN TRANSCRIBING, LLC
 P.O. Box 129
 Gibbsboro, NJ 08026
 Office: (856) 435-7172
 Fax: (856) 435-7124
 Email: dianadoman@comcast.net

Proceedings recorded by electronic sound recording; transcript
produced by transcription service.

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
----------------	---------------	--------------	-----------------	----------------

Ms. Knott	8/Bar	17/Ega	29/Bar	
-----------	-------	--------	--------	--

		22/Eng		
--	--	--------	--	--

Mr. Quill	31/Ign	45/Ega	61/Ign	
-----------	--------	--------	--------	--

		56/Eng		
--	--	--------	--	--

Ms. Koch	66/Bar	169/Ega		
----------	--------	---------	--	--

<u>EXHIBIT</u>		<u>ID</u>	<u>EVID</u>
----------------	--	-----------	-------------

G-2	PowerPoint presentation 7/16/08		11
-----	---------------------------------	--	----

G-1	Meeting minutes 7/16/08		12
-----	-------------------------	--	----

G-8	Nova call report 12/31/08		72
-----	---------------------------	--	----

G-13	Nova call report 3/31/09		72
------	--------------------------	--	----

G-54	Nova call report 6/30/09		72
------	--------------------------	--	----

G-93	Nova call report 9/30/09		72
------	--------------------------	--	----

G-164	Nova call report 12/31/09		72
-------	---------------------------	--	----

G-10	TARP application		76
------	------------------	--	----

G-11	Emails 2/9/09		78
------	---------------	--	----

G-21	Emails 5/26/09		84
------	----------------	--	----

G-22	Email 5/26/09		87
------	---------------	--	----

G-28	Email 6/2/09		92
------	--------------	--	----

G-29	Email 6/4/09		97
------	--------------	--	----

G-31	Email 6/10/09		99
------	---------------	--	----

G-57	Email 7/2/09		102
------	--------------	--	-----

G-61	Email string		108
------	--------------	--	-----

G-61A	Email 6/17/09		109
-------	---------------	--	-----

	<u>EXHIBIT</u>	<u>ID</u>	<u>EVID</u>
1			
2	G-62 Email 7/17/09		110
3	G-17 Memo 5/1/09		117
4	G-19 Email 5/18/09		118
5	G-200 Voice mail 8/19/09		166
6	G-77 Email 8/26/09		120
7	G-90 Emails 9/22/09		124
8	G-97 Email 10/4/09		126
9	G-120 Emails 10/30/09		127
10	G-125 Emails 11/11/09		131
11	G-133A Letter 11/10/09		134
12	G-201 Voice mail 12/14/09		166
13	G-202 Voice mail 12/15/09		166
14	G-203 Voice mail 12/15/09		166
15	G-140 Emil 12/15/09		139
16	G-204 Voice mail 12/15/09		166
17	G-144 Email 12/16/09		147
18	G-145 Email 12/16/09		149
19	G-146 Email 12/16/09		151
20	G-147 Email 12/16/09		153
21	G-151 Email 12/17/09		154
22	G-152 Email 12/17/09		155
23	G-156 Email 12/18/09		159
24	G-157 Email 12/18/09		161
25	G-160 Email 12/20/09		163

1 (The following was heard in open court at 9:30 a.m.)

2 THE COURT: May I see counsel at sidebar?

3 (Sidebar Conference)

4 THE COURT: Good morning.

5 COUNSEL: Good morning.

6 THE COURT: All right. Go ahead.

7 UNIDENTIFIED COUNSEL: Oh we just wanted to call the
8 Court's attention to there was a --

9 THE COURT: No kidding?

10 UNIDENTIFIED COUNSEL: Yeah. You mean you saw it?

11 THE COURT: Slightly.

12 MS. BARRY: I got conked out.

13 THE COURT: I did too, I wasn't going to mention it
14 but that's okay.

15 UNIDENTIFIED COUNSEL: The good looking guy at the
16 front of room (inaudible).

17 THE COURT: Well, frankly, as you all know, there's
18 no way in the world you're going to gag the press. They have
19 a right to publish it, it's the First Amendment, obviously.
20 As long as there is nothing in it that is in any way going to
21 create bias, then there's nothing I can do about it. I can't
22 tell them not to (inaudible) it. And I can certainly admonish
23 the jury not to read anything that they see that might be a
24 headline. And we also know that we are sure --

25 UNIDENTIFIED COUNSEL: Don't think about pink

1 elephants, Your Honor.

2 THE COURT: But the bottom line is, is that we've
3 gone through this in the opening. And I will reiterate it. If
4 you wish me to voir dire the jurors individually as to what
5 they've read, and whether or not that's going to impede or
6 impair their ability to be fair, if you request it, I'll hear
7 argument on it, and I may or may not do that.

8 I've read the article over and again. It appears to
9 be a report. It's relatively balanced in terms of what
10 happened in Court yesterday. And such is life. The jury, I
11 don't think read anything -- well, no, I take that back.
12 There were other things obviously regarding the outside
13 activities.

14 That's what, if you're going to make an argument
15 about, I'll hear you.

16 UNIDENTIFIED COUNSEL: Mike --

17 MR. ENGLE: Yeah. The only concern we had obviously
18 Your Honor was that the article mentions a number of times the
19 the (inaudible).

20 THE COURT: Right.

21 MR. ENGLE: Which we've been trying to delegate --
22 we dance around during the course of the trial. But I think
23 at this point my sense has always been the jurors take the
24 Court's instructions very seriously. I think that if the
25 Court reiterates that issue very clearly this morning, --

1 THE COURT: I'll do that.

2 MR. ENGLE: -- that I think is as far as we would
3 want you to go at this point.

4 THE COURT: Okay.

5 MR. ENGLE: I would not ask for a individual voir
6 dire.

7 THE COURT: All right.

8 MR. ENGLE: I think it just draws attention and
9 highlights an issue that we don't want to draw any more
10 attention to.

11 MR. EGAN: And I concur in that, Your Honor.

12 THE COURT: All right.

13 MR. EGAN: We have one other matter.

14 THE COURT: Yes, sir.

15 MR. EGAN: Just very briefly. In anticipation of
16 Mr. Preve testifying today, he refers repeatedly through his
17 reports to the FBI about Mr. Bekkedam's divorce. And unless
18 there's some reason why it would be relevant, we would ask
19 that he be instructed not to talk about the divorce.

20 MR. IGNALL: I don't anticipate any question that
21 would get to that.

22 MR. EGAN: Yeah.

23 THE COURT: But could you go a step further --

24 MR. IGNALL: I will instruct him --

25 THE COURT: -- and tell him not to volunteer.

1 MR. IGNALL: I'll tell him not to volunteer it.

2 THE COURT: Okay.

3 MR. EGAN: Okay. Thank you. That's not relevant.

4 Thank you.

5 THE COURT: All right. Now, lastly, in terms of the
6 instructions regarding any publications, I won't highlight
7 this at the beginning of the testimony, I'll wait at an
8 appropriate time in the day to apprise the panel.

9 UNIDENTIFIED COUNSEL: Thank you, Your Honor.

10 THE COURT: It's possible that some read it and some
11 did not, however, and that makes me kind of lean towards
12 saying something before they go out at the first break --

13 UNIDENTIFIED COUNSEL: That makes sense.

14 THE COURT: -- about (inaudible). All right?

15 UNIDENTIFIED COUNSEL: Thank you, Your Honor.

16 THE COURT: Thank you all.

17 (Sidebar Ended)

18 MR. IGNALL: Your Honor, may I have one moment to
19 ask Agent Lyons something?

20 THE COURT: Sure.

21 (Pause)

22 MR. IGNALL: Thank you, Your Honor.

23 THE COURT: Whenever you're ready, counsel. You
24 said you needed a minute. Any time you're ready.

25 MR. IGNALL: Oh, I'm ready. Thank you, Your Honor.

Knott - Direct/Bar

8

1 I'm sorry about that.

2 THE COURT: All right.

3 (Pause)

4 THE CLERK: All rise.

5 (Jury Enters)

6 THE COURT: Good morning. Good morning. Be seated.

7 JURORS: Good morning.

8 THE COURT: Counsel, you may call your next witness.

9 MS. BARRY: Thank you, Your Honor. The Government
10 calls Eileen Knott.

11 EILEEN KNOTT, GOVERNMENT WITNESS, SWORN

12 THE CLERK: Please sit down. State and spell your
13 name for the record, please?

14 THE WITNESS: My name is Eileen Knott, K-N-O-T-T.

15 MS. BARRY: May I proceed, Your Honor?

16 THE COURT: You may proceed.

17 MS. BARRY: Thank you.

18 DIRECT EXAMINATION

19 BY MS. BARRY:

20 Q Good morning, Ms. Knott.

21 A Good morning.

22 Q Ms. Knott, are you currently working?

23 A No.

24 Q Are you retired?

25 A Yes.

1 Q And prior to your retirement, what line of work were you
2 in?

3 A I was in banking. I did auditing and accounting.

4 Q And how long was your career in banking?

5 A I started in banking in 1970.

6 Q Okay. And did you have any kind of educational
7 background that led to your career in banking?

8 A Yes. I had an undergraduate degree in accounting and
9 management, and a masters in business administration. I was
10 also certified in auditing, but that has expired since I
11 retired.

12 Q Okay. And, ma'am, during your career in banking, did you
13 ever work at a bank called Nova Bank?

14 A Yes, I did.

15 Q And could you please tell the members of the jury the
16 time period that you worked at Nova?

17 A I think it was 2006 to 2008.

18 Q And what was your position there?

19 A I was in charge of the Compliance and Audit Departments.

20 Q And so what did that entail?

21 A We were responsible to ensure that the bank was in
22 compliance with all the regulations and regulatory
23 requirements, and also that audits were being performed on the
24 various areas to ensure the compliance.

25 Q Now as part of your position, did you also provide the

1 board of directors of the bank training?

2 A Yes.

3 Q Okay. And do you know approximately how often the board
4 was being trained, at least from the time period you were at
5 the bank?

6 A It was quarterly.

7 Q Okay. Ma'am, I'd like to show you what's been marked as
8 Government's Exhibit 1 -- I'm sorry Government's Exhibit 2. I
9 apologize. Government's Exhibit 2.

10 MS. BARRY: And if that could just be shown to the
11 witness at this time? Thank you.

12 BY MS. BARRY:

13 Q And this is the first page of Government's Exhibit 2.
14 And what is that?

15 A It's a PowerPoint slide presentation on training of the
16 Camel's Ratings.

17 Q Okay. And is your name on the front page of this
18 training?

19 A Yes.

20 Q And approximately -- does it give a date for the
21 training?

22 A Yes.

23 Q And what is that date?

24 A July 16, 2008.

25 MS. BARRY: Your Honor, the Government moves for the

1 admission of Government's Exhibit 2.

2 MR. ENGLE: No objection.

3 MR. EGAN: No objection.

4 THE COURT: Admitted.

5 MS. BARRY: Okay. May it be published, Your Honor?

6 THE COURT: Certainly.

7 MS. BARRY: If we could please just publish that
8 first page?

9 BY MS. BARRY:

10 Q And, again, you indicated that this is -- this was a
11 PowerPoint that you prepared, or was prepared at your
12 direction, relating to quarterly board training on July 16,
13 2008, regarding the Uniform Financial Institution's Rating
14 System, the Camel's rating, right?

15 A Yes.

16 Q Okay.

17 MS. BARRY: And if we could please turn to page 16
18 of that training?

19 (Pause)

20 MS. BARRY: Okay. If we could blow that up, please?

21 BY MS. BARRY:

22 Q And so the board was told, when it comes to capital,
23 there is this definition of capital, correct?

24 A Yes.

25 Q Okay. And can you just read the first two sentences?

1 A (Reading)

2 "Bank capital serves the same purpose as capital in
3 any other business. It is the cushion that protects a bank
4 against unanticipated losses and sustains it through poor
5 economic times."

6 Q Okay. Now if you -- in terms of providing that training,
7 I'd like you to now take a look at Government's Exhibit 1.

8 MS. BARRY: And if that would just be shown to the
9 witness, please?

10 BY MS. BARRY:

11 Q And what is Government's Exhibit 1?

12 A It's the board of directors minute from the meeting held
13 on July 16th, 2008.

14 Q Okay. And looking at the individuals that attended this
15 meeting, are you listed as one of those people?

16 A Yes, I am.

17 Q Okay.

18 MS. BARRY: Your Honor, the Government would move
19 for the admission of Government's Exhibit 1.

20 MR. EGAN: No objection.

21 THE COURT: Admitted.

22 MS. BARRY: May it be published, Your Honor?

23 THE COURT: Granted.

24 MS. BARRY: Thank you. If we could show that first
25 page?

1 BY MS. BARRY:

2 Q And, again, so does that correspond to the date that you
3 actually provided the training --

4 A Yes.

5 Q -- that is in the PowerPoint?

6 A Yes.

7 Q Okay. And looking at the directors that were present at
8 the time, is Brian Hartline listed as being present?

9 A Yes, he is.

10 Q Okay. And who was Brian Hartline?

11 A He was the president of the bank.

12 Q Okay. And did you know Mr. Hartline?

13 A Yes.

14 Q Okay. Do you see him here today?

15 A Yes.

16 Q And can you point him out, please?

17 A There.

18 Q Okay.

19 MS. BARRY: Your Honor, let the record reflect that
20 the witness has identified the defendant Brian Hartline.

21 THE COURT: The record shall so reflect.

22 MS. BARRY: Thank you.

23 BY MS. BARRY:

24 Q And just to be more specific, when it comes to this
25 training on page 11 of the board minutes --

1 MS. BARRY: If we could turn to that, please?

2 BY MS. BARRY:

3 Q And looking at quarterly board training, if you could
4 read that first sentence?

5 A (Reading)

6 "Mr. Hartline advised that Eileen Knott is now going
7 to present the quarterly board training, which will be the
8 topic of Camel's ratings."

9 Q Okay. And would you please read the second sentence?

10 A He added that he asked her to focus on liquidity and
11 capital, which are two of the top concerns in the banking
12 industry today."

13 Q Okay.

14 MS. BARRY: May I have a moment, Your Honor?

15 THE COURT: Certainly.

16 (Pause)

17 BY MS. BARRY:

18 Q All right. If we just stay on this page, and I guess for
19 the benefit of the jury, and I should have gone over this with
20 you, what is CAMELS?

21 A CAMELS are the various ratings that the bank is rated on
22 by the Government, either the FDIC, if it's a state bank, or
23 the OCC if it's a Federal bank. And its Capital, Assets,
24 Management, Equity, Liability and Sensitivity.

25 Q Okay. So CAMELS is what we call like an acronym for

1 those areas that regulators are going to examine a bank?

2 A Yes.

3 Q On. Okay. And if you look at that third paragraph, I
4 think it's the second sentence that you explain something
5 related to the director's responsibilities. Can you just read
6 that particular sentence, please?

7 A (Reading)

8 "She explained that it's each director's
9 responsibility, as well as management's, to make sure that the
10 bank's capital is adequate for safe and sound operations,
11 which is why Mr. Hartline presents all of those reports at the
12 board meetings."

13 Q Okay. So, again, this training is being provided so that
14 the board of directors understands the importance of CAMELS,
15 and in particular Mr. Hartline is pointing out that capital is
16 one of the major concerns?

17 A Yes.

18 Q Okay. And if we could, I'd just like to point one more
19 thing out based on Government's Exhibit 2, and if we go back
20 to page 16 where you do discuss CAMELS in the PowerPoint.

21 MS. BARRY: If we could blow that up, please?

22 BY MS. BARRY:

23 Q You had read for us the first two sentences. And if you
24 wouldn't mind reading the next two sentences?

25 A (Reading)

1 "Since capital represents the shareholders'
2 investment and appreciation in that investment from successful
3 operations, it is also the shareholders' stake put at risk,
4 lessening incentives for taking unwarranted or uncompensated
5 changes in operating the bank."

6 Q Okay.

7 A (Reading)

8 "Different industries have varying needs for
9 capital --"

10 Q Okay.

11 A (Reading)

12 "-- relative to non-financial businesses. Banks and
13 other financial services provide or operate with small amounts
14 of capital. Today the average equity capital to asset ratio
15 for bank hovers near 9.1 percent."

16 Q Okay. So in terms of capital, the necessity for it is to
17 make sure that you don't put the shareholders at risk, that
18 you have some cushion for losses -- unanticipated losses?

19 A Yes.

20 Q Okay.

21 MS. BARRY: No other questions, Your Honor. Thank
22 you.

23 THE COURT: You may cross-examination.

24 MR. EGAN: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. EGAN:

2 Q Good morning, Ms. Knott.

3 A Good morning.

4 Q You worked at Nova, I believe you said from sometime in
5 2006 to 2008, correct?

6 A If I remember correctly, yes. I know I left in 2008.

7 Q Okay. And obviously before you went to Nova you had a
8 lot of experience in banking?

9 A Yes. I've been in banking since 1970.

10 Q And you've been in accounting, and you're in -- been in
11 compliance?

12 A Yes. And auditing.

13 Q And -- I'm sorry.

14 A And auditing.

15 Q And auditing. So the job that you had when you started
16 at Nova Bank and the job you had when you left Nova Bank were
17 different, correct?

18 A I don't remember.

19 Q Do you remember that you were promoted at one point and
20 put into --

21 A Yes, I was. To a higher -- senior officer.

22 Q Right. And you became basically in charge of compliance?

23 A Yes.

24 Q And you were promoted essentially by Mr. Hartline,
25 correct?

1 A Yes.

2 Q And the purpose of that was so that you could have a
3 better oversight of the compliance functions at the bank,
4 correct?

5 A Yes.

6 Q And when you were doing your job there at the bank, you
7 were the person who was responsible for all these issues,
8 correct?

9 A Yes.

10 Q Compliance and auditing. And you have a lot of folks
11 working underneath you?

12 A I had two or three people working for me.

13 Q And they were doing the auditing and the other matters?

14 A Actually, at one point in time, the auditing was being
15 done by an outside accounting firm.

16 Q And that was McGladrey (phonetic), right?

17 A Yes.

18 Q But you had to obviously interface with them and helped
19 them to get the documents they needed?

20 A Correct.

21 Q And actually, using an outside auditing firm, that's a
22 common practice for a bank that size, correct?

23 A Yes.

24 Q And during that period of time, whatever documents those
25 auditors requested or any bank examiner requested, you

1 provided to them, correct?

2 A Yes.

3 Q Mr. Hartline never said, hey, don't give any auditors
4 those documents, did he?

5 A No.

6 Q And you never had any issues with the way that that was
7 handled, did you?

8 A No.

9 Q This presentation to the board, it was Mr. Hartline who
10 asked you to do it, correct?

11 A I don't remember, to be honest with you.

12 Q Okay. Well the minutes seemed to indicate that you were
13 invited there by him, would that be accurate?

14 A Yes.

15 Q Okay. And the whole point of it was, because the
16 directors are actually really in charge of the bank, isn't
17 that true?

18 A Yes.

19 Q And Brian Hartline reports to the directors?

20 A Correct.

21 Q And among those directors, there's a gentleman by the
22 name of Wayne Leevy?

23 A Yes.

24 Q Do you remember him?

25 A I vaguely remember him, yes.

1 Q And he was the chair of the audit committee, right?

2 A Correct.

3 Q And the audit committee oversees for the board all of
4 these activities as well, correct?

5 A Yes.

6 Q And, in fact, the auditors at the bank and the people who
7 do your job, are free to report any issues directly to Mr.
8 Leevy and the audit committee without even talking to Mr.
9 Hartline, because that's a safeguard, right?

10 A Correct.

11 Q Now you never had felt the need to go do that while you
12 were there, did you?

13 A Not that I can remember.

14 Q Well you would remember that, wouldn't you?

15 A Hopefully.

16 Q Yeah, I would think so. I would, anyways. Okay. So you
17 went to the board and you presented this training, and
18 obviously this is a good thing, isn't it?

19 A Yes.

20 Q Because we want to try to try an get the board to be as
21 educated as possible so they can do a better job in managing
22 the bank?

23 A Correct.

24 Q And you did read from page 16, and I'm not going to pull
25 up the document again, but that's just the very first page of

1 a very long section on Capital, correct?

2 Do you want to look at it?

3 A It probably is.

4 MR. EGAN: May I approach, Your Honor?

5 THE WITNESS: I mean, I remember --

6 MR. EGAN: It would be easier to do it from there.

7 THE COURT: Sure.

8 THE WITNESS: I remember that it was a pretty long
9 presentation, when I looked at it.

10 BY MR. EGAN:

11 Q I'm sorry I missed it, to be honest with you. Page 16,
12 it starts "Capital." And Capital's a C in CAMELS, right?

13 A Yes.

14 Q And A seems to start Assets.

15 A Yes.

16 Q So from 16 to 31, all that stuff is about Capital, right?

17 A Correct.

18 Q And you would agree with me this is a very high level
19 summary of Capital, and this isn't -- on the details.

20 A Correct.

21 Q Someone would have to be an auditor, like you, a very
22 experienced person?

23 A Or an accountant.

24 Q To really understand all the details.

25 A Probably. I know I wouldn't know definitely to be able

1 to say yes or no on that one.

2 Q Of course. I'm sorry. I'll withdraw the question.

3 You left Nova to take another position, correct?

4 A Yes.

5 Q You didn't leave because of any issue anything was wrong,
6 or anything bad there, right?

7 A No.

8 MR. EGAN: I have nothing further, Your Honor.

9 MR. ENGLE: May I, Your Honor?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. ENGLE:

13 Q Good morning, Ms. Knott

14 A Good morning.

15 Q Ms. Knott, you said that you came to Nova in 2006. Am I
16 correct about that?

17 A I think that's when I started there. But I'm not
18 positive.

19 Q Roughly. Okay. And you departed Nova in sometime in
20 2008?

21 A Yes.

22 THE COURT: Let's don't use departed.

23 BY MR. ENGLE:

24 Q No longer worked at Nova as of 2008?

25 A Yes.

1 Q Fortunately, she's here, we know she has not departed.
2 And during the roughly two years that you were there, did you
3 get to know individuals who were members of the board of
4 directors for the bank?

5 A Probably the ones that I knew the best were the members
6 of the audit committee.

7 Q Okay. And you had opportunities on certain occasions to
8 attend board meetings, is that right?

9 A Yes.

10 Q Was that a frequent occurrence?

11 A I really don't remember, to be honest with you.

12 Q Okay. But we certainly know that you attended the
13 meeting in July of 2008?

14 A Yes.

15 Q All right. And to your recollection, were there other
16 times where you gave similar trainings?

17 A If I remember correctly, we used to give that training
18 quarterly.

19 Q Understood. Now during your time when you first got to
20 Nova, did you ever meet a gentleman by the name of Barry
21 Bekkedam?

22 A Yes.

23 Q Okay. And did you meet him -- in what context did you
24 meet him?

25 A Mr. Bekkedam was -- I think he was the chairman of the

1 board.

2 Q Okay. So when you first --

3 A I really didn't have a lot of contact with him.

4 Q All right. When you first got to Nova in 2006, you were
5 aware that Mr. Bekkedam was the chairman of the bank board?

6 A Yes.

7 Q As you said, you didn't have a lot of contact with him,
8 would that mean during the course of your day-to-day work at
9 the bank, you wouldn't be on the phone with Mr. Bekkedam?

10 A No.

11 Q You wouldn't be getting a bunch of emails from Mr.
12 Bekkedam?

13 A No.

14 Q He wouldn't be asking to see you for a meeting?

15 A No.

16 Q All right. And you're aware of the fact that at a
17 certain point in 2007, Mr. Bekkedam left his position on the
18 bank board, correct?

19 A I don't remember.

20 Q Okay. Would you agree with me that he did in fact leave
21 the bank board, even if you don't remember exactly when it
22 was?

23 A Yes, he did leave.

24 Q All right.

25 MR. ENGLE: And if we could call up Government

1 Exhibit 1, please?

2 BY MR. ENGLE:

3 Q Ms. Knott, do you see what was shown to you on direct
4 examination as Government Exhibit 1?

5 A Yes.

6 Q And do you agree with me that that's the document that
7 records the minutes of the board of directors meeting for July
8 16th, 2008?

9 A Yes.

10 Q Okay. And it would be your experience from having worked
11 at this bank and other banks, that when there's a board
12 meeting, someone is responsible for taking down what occurs at
13 that meeting?

14 A Correct.

15 Q And one of the things that you would do is to first note
16 who is actually present at that meeting, is that correct?

17 A Yes.

18 Q All right.

19 MR. ENGLE: Sean, could we highlight the top portion
20 of that document that says "The following directors were
21 present?"

22 BY MR. ENGLE:

23 Q Ms. Knott, do you see that list there?

24 A Yes.

25 Q And that's the list that the minutes record of all the

1 individuals who were present as members of the board of
2 directors on July 16, 2008, do you agree with me?

3 A That's what the list is, yes.

4 Q Okay. And do you agree with me that Barry Bekkedam's
5 name is not there?

6 A Yes.

7 Q All right.

8 MR. ENGLE: Now could be go down, Sean, to the next
9 group that says "The following guests were present?"

10 BY MR. ENGLE:

11 Q And, Ms. Knott, do you see that there were a number of
12 individuals who were not actual directors of the bank, but
13 people that had been invited to participate in this meeting,
14 is that right?

15 A Yes.

16 Q And your name appears there on that list?

17 A Yes.

18 Q Because you were presenting that day.

19 A Yes.

20 Q And the other names on that list, were they individuals
21 who worked at the bank?

22 A Yes.

23 Q And you agree with me that Mr. Bekkedam's name is not
24 present on that list as a guest at the meeting on July 16th of
25 2008?

1 A Yes.

2 Q And would you agree with me that it would be uncommon for
3 the bank to invite an outsider, a person who's not on the
4 board or doesn't work within the bank, to one of these
5 quarterly trainings?

6 A I'm sorry?

7 Q You wouldn't just invite some guy off the street to come
8 sit in because it would be interesting?

9 A No.

10 Q All right. And based upon what we've looked at with
11 respect to those individuals who were present at the board
12 meeting on July 16th, 2008, fair to say that Mr. Bekkedam was
13 not present for this presentation that you gave on various
14 issues involving the CAMELS rating system?

15 A Yes.

16 Q So he was not there, unfortunately, to see the nice
17 PowerPoint presentation that we see in Government Exhibit 2,
18 correct?

19 A Correct.

20 Q All right. Now, ma'am, at a certain point in time, you
21 were contacted by individuals from the Government about
22 testifying here today, and gathering information about what
23 you remembered about Nova Bank, is that right?

24 A Yes.

25 Q Do you recall that you were first contacted on October

1 29th of 2015, does that sound about right to you?

2 A It was back -- because the original hearing was scheduled
3 for like November 29th, if I remember correctly.

4 Q Okay. That makes sense then. So you would agree with me
5 that after departing Nova Bank in 2008, you weren't contacted
6 by any Government investigators in 2009?

7 A No.

8 Q You weren't contacted by any Government investigators in
9 2010?

10 A No.

11 Q You weren't contacted by any Government investigators in
12 2011?

13 A No.

14 Q Same thing, no one in twelve? Correct?

15 A Correct.

16 Q No one contacted you in thirteen?

17 A No.

18 Q No one in fourteen?

19 A No. It wasn't until nearly the end of 2015 before you
20 heard from anyone in the Government about this investigation?

21 A Correct.

22 Q All right, now do you recall that during the time when
23 you were talking to the agents and other individuals from the
24 Government on October 29th of 2015, you were discussing some
25 issues about bank stock and the purchase of bank stock?

1 MR. EGAN: Your Honor, may I have -- may we see you
2 at sidebar?

3 THE COURT: Surely.

4 (Sidebar Conference)

5 MR. EGAN: (Inaudible) --

6 THE COURT: Okay.

7 MR. EGAN: -- involvement down the line.

8 THE COURT: Sure.

9 MR. EGAN: Thank you, Your Honor.

10 THE COURT: You're quite welcome.

11 (Sidebar Ended)

12 MR. ENGLE: I'm sorry, Ms. Knott, one second.

13 Actually those are all the questions I have for you, thank
14 you.

15 THE WITNESS: Okay. Thank you.

16 THE COURT: I just wanted to -- excuse me.

17 THE WITNESS: Oh, I'm sorry. I'm sorry, I thought I
18 was done.

19 REDIRECT EXAMINATION

20 BY MS. BARRY:

21 Q Just briefly, Ms. Knott. Do you know whether or not Mr.
22 Hartline has an accounting background?

23 A Yes, he does have an accounting background.

24 Q Okay. And what do you know about that?

25 A If I remember correctly, and -- I think Brian was a CPA.

1 Q Okay. And what does CPA stand for?

2 A Certified Public Accountant.

3 Q And what do you need to do in order to be a CPA?

4 A You have to work in public accounting for a period of
5 time, and then you have to pass an examination.

6 Q Okay. And were you a CPA?

7 A No. I was a certified internal auditor.

8 Q Okay. And is it fair to say that you left Nova Bank in
9 and around 2008, correct?

10 A That's correct.

11 Q All right. And did you have anything to do with Nova's
12 TARP application?

13 A No.

14 Q Were you -- do you think you were even at the bank when
15 Nova applied for a TARP?

16 A I don't remember being there, no.

17 Q Okay.

18 MS. BARRY: Those are all the questions I have, Your
19 Honor. Thank you.

20 MR. EGAN: No recross, Your Honor.

21 MR. ENGLE: Nothing, Your Honor. Thank you.

22 THE COURT: Now you may step down. Thank you.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Watch your step, please.

25 (Pause)

Quill - Direct/Ign

31

1 THE COURT: You may call your next witness.

2 MR. IGNALL: The Government calls John Quill.

3 THE CLERK: Please raise your right hand.

4 JOHN QUILL, GOVERNMENT'S WITNESS SWORN

5 THE CLERK: Please state your full name for the
6 record, please?

7 THE WITNESS: John Quill.

8 THE CLERK: Please spell your last name?

9 THE WITNESS: I'm sorry?

10 THE CLERK: Please spell your last name?

11 THE WITNESS: Q-U-I-L-L.

12 THE CLERK: Thank you.

13 THE COURT: You may proceed.

14 MR. IGNALL: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. IGNALL:

17 Q Good morning, Mr. Quill.

18 A Good morning.

19 Q What do you do for a living right now, Mr. Quill?

20 A I'm an external consultant with an International Monetary
21 Fund.

22 Q And how long have you been a consultant with the IMF?

23 A Well I worked for the IMF for two years full-time, and I
24 retired. And so now I do occasional assignments for the IMF.
25 But I worked in the IMF from June of 2013 to June 2015

1 full-time, and since I've done periodic assignments.

2 Q And did you work for anyone else before the IMF?

3 A Yes. I worked for the Office of Controller of the
4 Currency for 32 years.

5 Q And what is the Comptroller of the Currency?

6 A It's a regulator of national charter banks.

7 Q Is that a Federal Government organization?

8 A Yes. The Office of Controller of the Currency is a
9 bureau of the Treasury Department.

10 Q And you said you worked there 32 years. What job did
11 you have within the Controller of the Currency?

12 A Well I had a variety of jobs over those 32 years. I was
13 a field examiner for about half of the time. After that, I
14 was a manager of the Washington field office. And then for
15 the last seven years I was Deputy Controller for a special
16 supervision, that's the OCC's Office of Controller of the
17 Currency's Problem Bank Division.

18 Q All right. And what does it mean to be a field examiner?

19 A You go in and examine banks, and go from bank-to-bank
20 examining banks.

21 Q What are you looking for as a field examiner?

22 A You're looking for the condition of the bank, to assess
23 the condition of the bank, looking at its asset quality and
24 evaluating its asset quality, its earnings, evaluating capital
25 and liquidity, and management.

1 And you assign an overall rating for the bank.

2 Q And does that rating reflect how financially healthy the
3 bank is?

4 A Yes.

5 Q Okay. Are you familiar with something called the
6 Troubled Asset Relief Program?

7 A I am.

8 Q And do you know anything about Capital Purchase Program?

9 A Yes, I'm familiar.

10 Q All right. So what is the -- are they related to each
11 other in some way?

12 A Yes. The Capital Purchase Program was part of the
13 overall Troubled Asset Relief Program.

14 Q And in particular, did you have some involvement with the
15 Capital Purchase Program?

16 A I did.

17 Q And what as your involvement with that?

18 A Well the four federal banking agencies at that time
19 formed a council to consider applications for TARP funds. And
20 I was chair of that interagency council.

21 Q And what was the Capital Purchase Program?

22 A It was a program for the U.S. Treasury to invest in
23 preferred stock of banks.

24 Q And was that money that would go to any bank, or were
25 there criteria that the Treasury set up to decide what banks

1 to invest in?

2 A Yes, there was criteria set up. Did you --

3 Q Well let me go through -- as part of this council, did
4 you review applications of banks seeking funding under this
5 program?

6 A Yes, I did.

7 Q And what criteria were you looking at when evaluating
8 these bank's applications?

9 A Well ultimately we were looking at if the bank was
10 viable.

11 Q And what does viable mean?

12 A That means that it could continue operations on a
13 sustained basis, be a profitable bank.

14 Q And viable with or without the additional funding from
15 the Treasury?

16 A Our rule was that it has to be viable without the
17 funding.

18 Q Okay. And then this council, did you make
19 recommendations to any other body within the Government?

20 A In regards to TARP?

21 Q In regards to the -- yeah, the TARP funding.

22 A Well, yeah, the council would make a recommendation to
23 the investment committee at the U.S. Treasury Department.

24 Q All right. And who had the final say as to whether a
25 bank received funding under this Capital Purchase Program?

1 A That was the investment committee, the U.S. Treasury.

2 Q But in your experience, if your council did not at least
3 by a majority recommend a bank for approval, was that bank
4 likely to be approved?

5 A No.

6 Q Okay. Now when a bank applied for funding in this
7 program, did that application go directly to the United States
8 Treasury?

9 A No, it would go through the individual Federal banking
10 agency responsible for that particular bank.

11 Q And if you, as part of the council, had a question about
12 a bank, who did you go to to get information?

13 A Well we would -- we -- the Federal banking agency
14 responsible would present some information on the bank. If I
15 or other council members had questions, we would ask the
16 Federal banking agents responsible for the bank, and they
17 would go back and get additional information.

18 Q Did you ever have any contact directly with anyone at the
19 bank that was applying for TARP funding?

20 A No.

21 Q And did the Treasury put banks in different categories as
22 to whether they were reviewed by your council?

23 A Yes.

24 Q So what were those categories?

25 A Well there were basically three categories. One category

1 of if they were rated one or two, and didn't trip certain
2 other performance criteria, could go through the Federal
3 banking agency and to the investment committee without going
4 through the council.

5 Q And what does one or two mean?

6 A One and two is the best ratings of banks. One means the
7 bank is very well-run and very sound bank. A two is a
8 satisfactory rating as well.

9 Q All right. So that's category one. What's the next
10 category?

11 A So the next category were three rated banks, but also two
12 rated banks that tripped one of the performance categories
13 that we set up. So even though it was two rated, if it
14 exceeded certain performance category set up, it would need to
15 go through the council.

16 Q Okay. And what's the third category?

17 A The third category were basically banks rated four and
18 five, and they were presumed denial.

19 Q And what does a four or five mean in the rating?

20 A Four -- a five means failure is fairly imminent. A four
21 means bank failure is probable, unless they change something
22 significantly in the bank.

23 Q So let's focus on the middle category then. If it went
24 to the council, what were you and other members of the council
25 looking at to decide whether to recommend approval?

1 A Individual council members would do work ahead of the
2 council meeting, looking at the bank's performance. I would
3 pull something called a Uniform Bank Performance Report for
4 all the banks that we considered. It had various financial
5 information on there. But then we would also of course
6 consider the write-up presented by the Federal Baking Agency
7 responsible for the bank.

8 Q Do you recall ever reviewing an application from a bank
9 known as Nova Bank?

10 A I did not independently recall it. But I -- when I saw
11 material my memory was refreshed, yes.

12 Q Okay. So having reviewed materials in preparation for
13 trial --

14 A Yes.

15 Q -- do you recall whether you and the members of the
16 council reviewed an application for Nova Bank?

17 A Yes.

18 Q Okay. And let me show you what we've marked as Exhibit
19 16. It's going to come up on your screen.

20 MR. IGNALL: And may I approach, Your Honor?

21 THE COURT: Yes, sir.

22 BY MR. IGNALL:

23 Q It's a multi-page document --

24 A My screen is dark.

25 Q -- hopefully it will become light shortly. But you can

1 also look at the -- it's a multi-page document. Do you
2 recognize --

3 MR. IGNALL: And it's already been admitted, Your
4 Honor. May we publish it to the jury?

5 THE COURT: Yes, sir.

6 BY MR. IGNALL:

7 Q Please flip through that and tell me if you recognize
8 this document?

9 A Yes, I recognize the document.

10 Q And what is Exhibit 16?

11 A This is, because we had a lot of cases going through the
12 council, we set up a system where we could do a notation --
13 what we called a notational vote. So if the Federal banking
14 agency proposing this thought there wouldn't be much in the
15 way of issues to the bank, they would just distribute the
16 information, and we would mark whether we approved or denied,
17 or whether we needed additional information and that had to go
18 through the council for discussion.

19 Q And does Exhibit 16 reflect whether there was a
20 notational vote on Nova's application?

21 A Yes, it does.

22 Q And when was that?

23 A On April 10th, 2009.

24 Q And what was the result of this notational vote?

25 A There was -- there was a vote, one approved by the

1 banking agency sponsoring it. One denying, and two remanding
2 it to the council.

3 Q And so what did that mean happened to the application?

4 A It meant that it had to go to the council to be
5 discussed.

6 Q And did you or any other member of the council request
7 additional information as a result of this notational vote?

8 A Yes.

9 Q And what kind of information were you looking for?

10 A So we requested information -- so I asked whether the
11 FDIC had verified securities. Banks have to analyze those
12 securities for other than temporary impairment, and I asked if
13 the FDIC had verified the bank's analysis on how much of the
14 \$18 million capital was put into a bank that they acquired.
15 We were --

16 Q All right. Let me stop you there. Did you have some
17 understanding about the bank having already raised a certain
18 amount of capital?

19 A Yes. It was my understanding that they had already
20 raised \$18 million of capital for the acquisition of another
21 bank.

22 Q Okay. And was the amount of capital in the bank one of
23 your concerns in terms of approving or not approving Nova's
24 application?

25 A Oh, absolutely.

1 Q And why is that?

2 A Well it's a concern -- I mean, it's an issue that we want
3 to look at in every bank's case that applied for TARP. Again,
4 that was to make sure that the bank was -- or to assess
5 whether the bank was viable.

6 Q And what's the benefit of having more capital in terms of
7 the bank being viable?

8 A Well the more capital, the more, you know, you can absorb
9 future losses, and the more likely you are viable.

10 Q And when you say losses, what possible losses are out
11 there that a bank could sustain?

12 A Well a bank could have losses on its security portfolio.
13 During the time that this was taking place there were a lot of
14 losses in bank's loan portfolios.

15 Q When you say there's a loss in a loan portfolio, what
16 does that mean?

17 A That means that the loan is probably not collectible in
18 full, or maybe at all.

19 Q So a loss could be, a borrower doesn't pay back the money
20 to the bank?

21 A Correct.

22 MR. EGAN: Objection

23 THE COURT: Sustained.

24 BY MR. IGNALL:

25 Q Okay. All right. So as a result of this meeting, did

1 the council get additional information about Nova Bank?

2 A Yes.

3 Q And did the council have a full meeting regarding Nova
4 Bank's application?

5 A Yes, we did.

6 Q All right. I'd like to turn your attention, it's going
7 to come up on the screen, I hope, to Exhibit 30.

8 MR. IGNALL: Which has also already been admitted,
9 Your Honor.

10 THE WITNESS: Yes.

11 BY MR. IGNALL:

12 Q All right. Do you recognize Exhibit 30?

13 A Yes, I do.

14 Q What is Exhibit 30?

15 A Exhibit 30 reflects the vote of the council as a result
16 of this meeting on June 10th.

17 Q Okay. And were you present for this vote?

18 A Yes.

19 Q All right. And at this point, had you gotten any
20 additional information about Nova Bank?

21 A Yes, we did.

22 Q What additional information had you gotten about Nova
23 Bank -- let me ask you this, did you vote to approve Nova
24 Bank's -- or recommend approving Nova Bank?

25 A I did, based on certain contingency.

1 Q And had you gotten information from the bank that changed
2 your mind from remand to yes?

3 A As presented through the FDIC, yes.

4 Q From the FDIC, did you get information from the bank?

5 A Yes.

6 Q And what was that information?

7 A That they would raise \$15 million in additional new
8 capital.

9 Q All right. And what did you understand new capital --
10 raising \$15 million in new capital to mean?

11 A That means investors would bring in new -- new capital to
12 the bank, invest \$15 million into the bank.

13 Q Did you understand whether the bank would be loaning the
14 investor any part of that?

15 A No. I -- I -- I assumed they wouldn't, because it's
16 prohibited by law.

17 Q And that was -- would that have been the capital you were
18 looking for, if it was loaned by the bank?

19 A No. It wouldn't count as capital.

20 Q All right. So if I could turn your attention back to the
21 first page here, is your vote noted somewhere here?

22 A Yes, it is.

23 Q Where is that?

24 A It's noted on the line that says "OCC approved JQ," and
25 it's got an asterisk.

1 Q All right. And then if we go down, what's the asterisk
2 say?

3 A (Reading)

4 "Contingent on capital injection of \$15 million."

5 Q And do you know who wrote that down?

6 A I did.

7 Q Okay. And do you know at this point whether the bank was
8 considered by the FDIC to be well capitalized? And if you
9 could flip your attention to the second page, that might help
10 refresh your recollection.

11 MR. IGNALL: And, Your Honor, it might be easier --

12 BY MR. IGNALL:

13 Q Would you like to look at the paper copy?

14 MR. IGNALL: May I approach?

15 THE COURT: You may.

16 THE WITNESS: No, it was not well capitalized.

17 BY MR. IGNALL:

18 Q And when you and the other members of the council agreed
19 to the contingency, was that in any way to address how
20 well-capitalized or not the bank was?

21 A Yes. It was to address that.

22 Q All right. And when looking at the viability of Nova
23 Bank, for example, you said something about looking at asset
24 quality.

25 A Right.

1 Q When you're looking at asset quality, does it matter
2 whether -- is a loan an asset that you're talking about
3 potentially?

4 A Yes, a loan is an asset of the bank. Yes.

5 Q All right. But are you looking at how risky some of
6 these loans are?

7 A Yes.

8 Q Okay. And does it make a difference whether the loan is
9 secured or unsecured?

10 A Yes.

11 MR. EGAN: Objection.

12 THE COURT: Overruled.

13 BY MR. IGNALL:

14 Q And why does it make a difference?

15 A Well if it's secured, and depending upon the value of the
16 collateral, you may collect all of the loan eventually through
17 seizing the collateral and stalling the collateral of the
18 bank. Or you may collect part of the loan.

19 Q And if it's unsecured?

20 A If it's unsecured, and it's a non-performing loan, you
21 may not collect any.

22 Q After the council recommended approval to the Department
23 of the Treasury, do you know if Nova Bank's application was
24 ultimately approved?

25 A It's my -- I didn't know at the time, it's my

1 understanding now that it -- it -- I don't -- I'm not sure
2 what you mean by that.

3 Q Let me ask differently.

4 A Okay.

5 Q After the council recommended to the Treasury approval
6 with this contingency of raising \$15 million in new capital,
7 do you -- would you have been directly involved in
8 communications the bank would have about whether it raised
9 that money or not?

10 A No, I would not have been.

11 Q Okay.

12 MR. IGNALL: No further questions.

13 MR. EGAN: May I inquire?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. EGAN:

17 Q Good morning, sir.

18 A Good morning.

19 Q You were on the council, correct?

20 A Yes.

21 Q And then there was something you mentioned called the
22 investment council.

23 A The investment committee.

24 Q The investment committee.

25 A Yes, at the U.S. Treasury.

1 Q Now the council you were on, doesn't actually approve the
2 loan, in terms of finally approving it, so that -- the TARP
3 investment, in terms of finally approving it so the people get
4 the money, correct?

5 A That's correct.

6 Q You're making a recommendation?

7 A That's correct.

8 Q So it's interesting, because you said that -- Mr. Ignall
9 asked you a question at the end about whether something was
10 approved, and you were kind of, it depends on what approved
11 meant. Do you remember that?

12 A Yes. So --

13 Q Well just let me ask a question, please. Approved means
14 approved, right?

15 A Yes.

16 Q Okay. So what did you mean by it depends on what approved
17 meant?

18 A Well I wasn't sure, frankly, what he was asking. Whether
19 he meant the investment committee approved the inject -- the
20 investment of Treasury funds into the bank, or whether he
21 meant, you know, it actually went to the bank.

22 Q And ultimately, whether those funds are invested -- or
23 invested in the bank, I guess we can call it that, by the
24 TARP, is a decision that is made by this investment council?

25 A That's correct.

1 Q You're not on the investment council?

2 A No.

3 Q You didn't have anything to do with that?

4 A No. I didn't.

5 Q Don't have any --

6 A Well the only thing I had to do with is make the
7 recommendation to it.

8 Q And you don't really know how they made their decision,
9 or what decision they made?

10 A I don't.

11 Q Okay. Do you know who's on the investment committee?

12 A I knew at the time, I can't recall now.

13 Q Okay. But we had a gentleman over here yesterday by the
14 name of Mr. Schaffner, did you know him?

15 A I don't recall him.

16 Q Okay. But he wasn't on the investment committee, was he?

17 A I don't know.

18 Q So ultimately an application comes in, right?

19 A Yes.

20 Q Okay. That application would have been submitted
21 sometime in October of 2008, correct?

22 A I'm unsure of when it would have been submitted.

23 MR. EGAN: Can we have Government 6, please?

24 BY MR. EGAN:

25 Q Did you actually review applications?

1 THE COURT: Counsel, do you wish it to be on the
2 screen?

3 MR. EGAN: Well I was just going to ask a question
4 while it was coming up.

5 Could I have Government 6, please? It's been
6 published.

7 BY MR. EGAN:

8 Q Thank you. Are you familiar with this document?

9 A Yes.

10 Q Okay. Did you review these?

11 A I -- so it depends -- for OCC banks, I would have
12 reviewed these, for other banks it depends upon whether this
13 was included in the package or not.

14 MR. EGAN: If we could have page two?

15 BY MR. EGAN:

16 Q If I represent to you this is all the information that
17 was asked in this application, is that how you recall it?

18 A Um-hum.

19 Q Okay.

20 THE COURT: Yes or no, please.

21 THE WITNESS: Yes.

22 BY MR. IGNALL:

23 Q And so, obviously, this application is not enough
24 information for you to make any kind of an informed decision
25 about whether or not you should recommend that this be

1 approved, correct?

2 A Correct.

3 Q And what you really want to do is look at all of the
4 examination reports, and the call reports, and those types of
5 documents, correct?

6 A So on the council, we would not be able to look at the
7 other Federal banking agency's reports of examinations. We
8 would depend upon them presenting the results of it.

9 Q Understood. So you couldn't actually look at the report,
10 but the -- in this case it was the FDIC.

11 A Right.

12 Q They would prepare a summary of that report with all of
13 the pertinent information in it, correct?

14 A Correct.

15 Q And that certainly would be something that you would rely
16 on in making your determination?

17 A Correct.

18 Q And if that report were to change substantially by, say,
19 lowering the rating on a bank, that would be something that
20 would clearly affect your determination, correct?

21 A Yes. It could.

22 Q Now I want to take you to Government 16, please. And
23 this is the notation from the meeting where you asked for more
24 information. Remember that?

25 A Yes, but I don't have anything on my screen.

1 Q Yeah, I'm sorry, it will be up in a sec, hopefully.

2 (Pause)

3 Q Thank you. And if we go to page nine, which is Mr.
4 Coyle's (phonetic) page.

5 MR. EGAN: And if you could enlarge that so he can
6 see it better?

7 BY MR. EGAN:

8 Q You're basically saying here, I don't have enough
9 information, I need more, right?

10 A Yes.

11 Q And you ask about two things. The first thing you ask
12 about is, has FDIC verified OTTI analysis? And I believe you
13 testified on direct examination that that had to do with
14 securities that the bank owned from other institutions that
15 you wanted to know the viability of, correct?

16 A Yes.

17 Q And the concern there is that, so many institutions were
18 having problems in that period of time, that those securities
19 may have been -- not be worth what they originally believed
20 them to be, correct?

21 A Yes.

22 Q And in fact, FDIC did do a further analysis of that,
23 didn't they?

24 A I believe they did.

25 Q And in fact they determined that those securities weren't

1 worth what was originally believed to be -- they were
2 originally believed to be worth, and there was a downgrade as
3 a result of that, correct?

4 A Correct.

5 Q And that downgrade substantially affected the position of
6 the bank?

7 A Could I correct my statement?

8 Q Sure.

9 A So they get through review of that, and there were
10 additional losses in the securities portfolio. I -- I don't
11 recall at the moment whether there was a downgrade or not.

12 Q You don't really remember that. Because after this June
13 vote, that's the last you had to do with this, right?

14 A Yes.

15 Q So we can speak to other witnesses about that, sir. The
16 next thing you want to talk about is how much of the 18
17 million capital was put into PBB, correct?

18 A Yes. That's the question.

19 Q Now PBB, to refresh your recollection, that's the
20 Pennsylvania Business Bank?

21 A Yes. I believe so.

22 Q And that was a bank that Nova actually acquired late in
23 2008, correct?

24 A It was one they acquired, I take it.

25 Q So this 18 million in capital, this is money that had

1 been raised prior to April of 2009, correct?

2 A Yes.

3 Q And money that had been used to buy, basically purchase
4 another bank?

5 A Yes.

6 Q So that's got nothing to do with this other 15 million
7 that you're talking about?

8 A No, it doesn't have anything to do with it.

9 Q That's money they raised the year before that?

10 A Yes.

11 Q And ultimately --

12 MR. EGAN: If we could have Government 30, please?

13 BY MR. EGAN:

14 Q -- there's another meeting in June, correct?

15 A I'm sorry, what was the question?

16 Q There's another meeting in June.

17 A Yes.

18 Q And that's the one where you vote?

19 A Yes.

20 Q And if I could direct your attention to page three. It
21 says:

22 " Mr. Quill asked whether the injection is
23 contingent upon the receipt of TARP funds. And Mr. Hunter
24 replied in the affirmative."

25 Do you see that?

1 A Yes.

2 Q And that obviously is an important issue for you at that
3 point, correct?

4 A Yes.

5 Q Because as you said on direct, TARP funds can't be used
6 to make the bank viable, the bank has to be viable without the
7 TARP funds?

8 A That was our -- yeah, that was --

9 Q That's something that everybody on the council believed,
10 correct?

11 A Yes.

12 Q Do you know whether that was communicated to the bank?

13 A I do not know.

14 Q And the fact that the investment was contingent on
15 receiving the TARP funds, that would be a potential problem
16 for you, correct?

17 A Yes. I was somewhat concerned about the condition of the
18 bank, so that's why I would want to be sure that they raised
19 additional capital.

20 Q Okay. And do you remember that Mr. Birch voted against
21 this?

22 A Yes, I do.

23 Q And do you remember what his reason for voting against it
24 was that the bank -- or one of his reasons was that the bank
25 was about -- or the holding company, excuse me, was about to

1 be downgraded by the FRB?

2 A I recall that, yes.

3 Q Okay. So when you voted to approve this, you're
4 basically saying to the people at the next level, this
5 investment committee that we yet to find out who they are, you
6 are basically saying to them, this thing's okay in my view, if
7 they get this money, right?

8 A Yes.

9 Q But it would be fair to say that that was a fairly
10 tentative position?

11 A I don't know what you mean by fairly tentative.

12 Q In other words, there are a whole lot of other variables
13 out there that could go wrong between now and when this
14 council would ultimately make a determination?

15 A Possible.

16 Q And during that period of time, as always, there would be
17 more bank examinations?

18 A That depends upon the Federal banking agency.

19 Q But you would expect that within a period of six to nine
20 months there would be more bank examinations, correct?

21 A Not necessarily. It could be 12 months out, it could be
22 18 months out --

23 Q Well if I had to represent to you that there was one, you
24 wouldn't be surprised, would you?

25 A No.

1 Q And clearly, the decision that was ultimately made by
2 this council would have taken that into effect as well?

3 A I don't know that. Of the council, or the investment
4 committee?

5 Q Yeah. The investment committee, excuse me, I'm sorry.

6 A I don't know that.

7 Q Okay. Well you talked a little bit about -- Mr. Ignall
8 asked you if a loan --

9 A Mister who?

10 Q The prosecutor.

11 A Oh, I'm sorry.

12 Q Yeah, it was Mr. Ignall. This guy here. He asked you
13 about whether a loan was an asset. Correct?

14 A Yes.

15 Q And a loan is an asset, isn't it?

16 A Yes. Yes.

17 Q And in fact a loan can be put on a balance sheet,
18 correct?

19 A Yes.

20 Q And there are various factors to determine whether that
21 loan is a risky loan or a not risky loan, correct?

22 A Correct.

23 Q And while collateral is certainly one, there are many
24 other factors as well?

25 A Yes, absolutely.

1 Q The strength of the borrower?

2 A Yes.

3 Q If you have a borrower who said he's worth \$300 million,
4 that's probably a better loan than if I borrowed it, right?

5 A It depends upon other factors but --

6 Q Right. But there are lots and lots of factors.

7 A Yes.

8 Q But you don't disagree at all that a loan is an asset
9 that a bank can put on a balance sheet?

10 A No, that's true.

11 Q Okay.

12 MR. EGAN: If I could have a moment, Your Honor.

13 (Pause)

14 MR. EGAN: Nothing further.

15 MR. ENGLE: May I, Your Honor?

16 THE COURT: Yes, sir.

17 MR. ENGLE: Thank you.

18 CROSS-EXAMINATION

19 BY MR. ENGLE:

20 Q Good morning, Mr. Quill.

21 A Good morning.

22 Q Take your time. Mr. Quill, I just have a few questions
23 for you. You indicated that during the process of engaging in
24 your work on the CPP council, you would not have direct
25 contact with anyone at the bank, is that correct?

1 A That's correct.

2 Q Okay. You would, however, receive information from the
3 primary regulator about what the bank was doing, information
4 that was relevant to your decisions, is that correct?

5 A That's correct.

6 Q All right. And in this particular instance with Nova
7 Bank, the primary regulator would have been the FDIC?

8 A Correct.

9 Q And during the time that you were considering the
10 application of Nova for TARP funds and you were performing
11 your work on the CPP council, you received certain information
12 and communications from that primary regulator, the FDIC?

13 A Yes.

14 Q And you would rely upon that information in helping you
15 make your assessment and recommendation to the investment
16 council, which was the next step down the line, am I right?

17 A Yes.

18 Q Okay. Now during the time frame that you were receiving
19 information from the primary regulator, the FDIC, at any point
20 in time did you receive information about a man named Barry
21 Bekkedam?

22 A I do not recall that.

23 Q You never even heard that name?

24 A No.

25 Q Never received any information whatsoever relating to a

1 guy that worked in the financial industry named Barry
2 Bekkedam?

3 A I don't recall that.

4 Q So during the entire time that you were processing the
5 information from the primary regulator, and considering how to
6 recommend to the investment council whether Nova Bank got TARP
7 funds or didn't, Barry Bekkedam didn't factor into the
8 equation at all for you?

9 A That's correct.

10 Q Okay. Now during the time that you were indicating, I
11 think that you didn't have a direct recollection of this
12 particular application when you were first asked about it, is
13 that right?

14 A Correct.

15 Q Okay. Now you were contacted by agents of the Government
16 in early November of 2015. Does that sound right to you?

17 A I guess that's right. I don't recall specifically when,
18 but, yes.

19 Q Certainly the contact came several months ago?

20 A Yes.

21 Q Okay. From 2009, when you finished up dealing with the
22 issue of Nova Bank and the work that you had to do on the CPP
23 council, the application of Nova Bank for TARP funds was not
24 on your mind at all until the agents contacted you in November
25 of 2015, would that be fair to say?

1 A That's fair to say.

2 Q And that's why it's fair that you needed your
3 recollection refreshed by seeing certain documents?

4 A Yes.

5 Q Okay.

6 MR. ENGLE: Now could we call up Government Exhibit
7 6, please?

8 BY MR. ENGLE:

9 Q Do you see that there, Mr. Quill?

10 A Yes.

11 Q All right. Mr. Egan showed you that and asked you a few
12 questions about it during his cross-examination. This is the
13 application that was submitted by Nova to start the process of
14 seeing whether they could get TARP funds, right?

15 A Yes.

16 Q Okay. And from what you can see on the screen, on page
17 one it asks for a primary contact and a secondary contact?

18 A Yes.

19 Q Are either one of those names Barry Bekkedam?

20 A No.

21 Q Okay.

22 MR. ENGLE: Could we go to the last page, please?
23 I'm sorry, the second to last page.

24 BY MR. ENGLE:

25 Q There's a place where someone's supposed to sign the

1 application that's dated October 27, 2008?

2 A Um-hum.

3 Q That doesn't say Barry Bekkedam, is that right?

4 A It does not.

5 Q Okay. So nowhere on the application from Nova to the
6 TARP program, Barry Bekkedam doesn't appear anywhere on that
7 document, is that right?

8 A That's right.

9 Q Okay. Now I believe you said that -- or let me ask you
10 this, actually. Your background, in terms of your degree, is
11 in finance, am I right about that?

12 A That's correct.

13 Q Okay. And, in fact, you're not in accounting, and you
14 don't have an accounting background?

15 A Well in finance you have some accounting background, yes,
16 but I'm not a CPA.

17 Q Right. And you don't have a degree in accounting?

18 A That's correct.

19 Q And you never worked directly in accounting?

20 A Well an examiner in a bank is involved in accounting of
21 the bank.

22 Q Understood. But I'm saying, you never worked as a CPA or
23 anything that a traditional account would do?

24 A That's correct.

25 Q Okay. Ever heard of EITF85-1?

1 A I'm sorry, what?

2 Q Ever hear of EITF85-1?

3 A I don't recall it specifically.

4 Q Okay. Thanks.

5 MR. ENGLE: Nothing further.

6 MR. IGNALL: A couple of questions.

7 REDIRECT EXAMINATION

8 BY MR. IGNALL:

9 Q Mr. Egan asked you if a loan is an asset that can be on
10 the balance sheet, do you remember that?

11 A Yes.

12 Q If it's an asset on the balance sheet, is that the same
13 as capital?

14 A No. It's not the same as capital.

15 Q Why is it not the same?

16 A Well because capital is the difference between all of the
17 assets and the liabilities. It's capital.

18 Q So -- but if it's an asset, how is that different from
19 capital in terms of -- especially when you're looking for an
20 injection of capital?

21 A Well if I'm looking for an injection of capital, that
22 would be new money invested into the bank which would increase
23 both the asset side, depending on whatever it's in, cash or
24 invested in loans, or securities, or whatever. And then the
25 liability. So the capital increases.

1 Q And I believe Mr. Egan asked you that you didn't know
2 what the loan -- the investment committee might do after your
3 recommendation, is that right?

4 A I did not know what they would do?

5 Q Yeah. If something changed, for example.

6 A Oh, if something changed, no, I don't know.

7 Q But do you know what the investment committee would have
8 done had Nova Bank not met the contingency of the capital
9 injection?

10 MR. EGAN: Objection.

11 THE COURT: Sustained.

12 BY MR. IGNALL:

13 Q Let me ask it differently. In your experience as the
14 chair of the CPP Council, was the council recommendation
15 necessary for the investment committee to approve an
16 application?

17 A Yes.

18 Q All right.

19 MR. IGNALL: Nothing further.

20 MR. EGAN: No recross.

21 MR. ENGLE: Nothing, Your Honor. Thank you.

22 THE COURT: Thank you, sir, you may step down.
23 Watch your step, please.

24 THE WITNESS: Thank you.

25 (Pause)

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, we're going to take our morning recess at this time.
3 However, before you go back into the jury room, I want to
4 raise one matter. And that is, we are all acutely aware of an
5 article that appeared in the news media regarding this trial.

6 If you have not read it, I instruct you not to read
7 it. If you have read it, I instruct you to disregard it. And
8 from this time forward, as I've indicated all along, please
9 avoid any newspaper articles, radio broadcasts, or anything
10 else on the internet or public media about this case.

11 The case can only be decided by you based upon what
12 you hear from the witness stand, or entered into the record by
13 counsel. All right? Thank you very much. See you in about
14 15 minutes.

15 (Jury Exits)

16 THE COURT: All right. 15 minutes, please.

17 (Court in recess 10:42 a.m. to 11:15 a.m.)

18 MR. IGNALL: One item, Your Honor.

19 THE COURT: Yes, sir.

20 MR. IGNALL: Before Ms. Koch takes the stand, I want
21 to read in one of the stipulations that we've agreed to.

22 THE COURT: You all may be seated then.

23 MR. IGNALL: And if the Court wanted to instruct the
24 jury as to what the stipulation is before I read it.

25 THE COURT: Sure.

1 MR. IGNALL: Okay. And the others we'll read later,
2 but we've agreed on this one to read before the next witness.

3 THE COURT: All right.

4 (Pause)

5 THE COURT: The stipulation is to her testimony?

6 MR. IGNALL: No, no. It's a stipulation -- it's
7 just about the bank being a Pennsylvania State Chartered Bank
8 that had deposits insured by the FDIC. The stipulation that I
9 was going to read is that:

10 "At all relevant times of the Indictment Nova Bank
11 was a Pennsylvania State Chartered savings bank that had
12 deposits insured by the Federal Deposit Insurance
13 Corporation."

14 THE COURT: Okay. Thank you.

15 MR. EGAN: Could we say at all relevant times,
16 without the Indictment?

17 MR. IGNALL: Say that again?

18 MR. EGAN: Could we just say at all relevant times,
19 without emphasizing at all relevant times in the Indictment? I
20 don't know if in the Indictment adds anything to the mix.

21 MR. IGNALL: I'm fine with that, Your Honor.

22 MR. EGAN: Thank you, Your Honor. Thank you.

23 (Jury Enters)

24 THE COURT: You may be seated. Thank you. Members
25 of the jury, at the outset, I instructed you that during the

1 course of a trial the attorneys may enter into stipulations,
2 and you are going to hear a stipulation at this point in time.
3 It is nothing more than an agreement by all attorneys
4 representing their respective clients that what is read to you
5 at this point in time is accurate, true, and is not contested.

6 You may proceed.

7 MR. IGNALL: Your Honor, the stipulation is:

8 "That at all relevant times, Nova Bank was a
9 Pennsylvania State Chartered Savings Bank that had deposits
10 insured by the Federal Deposit Insurance Corporation."

11 THE COURT: So stipulated?

12 MR. EGAN: Yes, Your Honor.

13 THE COURT: All right. You may continue.

14 MS. BARRY: Your Honor, at this time the United
15 States would call Lisa Koch.

16 THE CLERK: Please raise your right hand. Please
17 remain standing.

18 LISA KOCH, GOVERNMENT WITNESS, SWORN

19 THE CLERK: Please state and spell your name.

20 THE WITNESS: Okay. My name is Lisa Koch, K-O-C-H.

21 THE CLERK: Thank you.

22 THE COURT: You may proceed.

23 MS. BARRY: Thank you, Your Honor.

24 BY MS. BARRY:

25 Q Good morning, Ms. Koch.

1 A Good morning.

2 Q Would you please tell us where you work?

3 A I work at the FDIC as an examiner.

4 Q Okay. And how long have you been with the FDIC?

5 A Twenty-four years.

6 Q And what does the FDIC do?

7 A They insure bank deposits. And we also regulate some of
8 the banks.

9 Q And as part of the FDIC's regulation of banks, does it
10 conduct periodic examinations of the banks?

11 A Yes.

12 Q And approximately how often is a bank examined?

13 A It depends on the size of the bank. It's either every 12
14 months or every 18 months.

15 Q Okay. And I -- just to be clear, what does FDIC stand
16 for?

17 A Federal Deposit Insurance Corporation.

18 Q Now are you familiar with Nova Bank?

19 A Yes.

20 Q And was Nova Bank FDIC insured?

21 A Yes.

22 Q And, therefore, was Nova Bank regulated by the FDIC?

23 A Yes.

24 Q Was Nova Bank regulated by any other agencies?

25 A Yes, it was the Pennsylvania Department of Banking.

1 Q And did Nova Bank have a parent holding company called
2 Nova Financial Holdings?

3 A Yes.

4 Q And was Nova Financial Holdings regulated by any agency?

5 A Yes, it was regulated by the Federal Reserve.

6 Q Now did the different agencies that regulated the bank,
7 as well as the holding company, communicate with each other?

8 A Yes, quite often.

9 Q And were you the case manager for Nova Bank from
10 approximately 2008 to 2010?

11 A Yes.

12 Q And what were your duties as a case manager?

13 A Well I would review the different reports when they came
14 in, get them ready, send them out to the bank. And then I'd
15 also process applications.

16 Q Okay. So when you say different reports, what kind of
17 reports are you talking about?

18 A Reports of examination.

19 Q Okay. And so that would be when the bank was examined by
20 the FDIC, is that right?

21 A Or the State, or the Fed. We would get all the reports.

22 Q And what is the purpose for an examination?

23 A To assess how much risk the bank is taking.

24 Q And how -- in an exam, how is a bank rated?

25 A Okay. It's called a CAMELS rating, and it's rated on six

1 components, and then an overall composite rating is assigned
2 to the bank.

3 Q Okay. And those six components, is that what CAMELS is
4 an acronym for?

5 A Yes.

6 Q Okay. And what are those six components?

7 A Capital, Asset quality, Management, Earnings, Liquidity
8 and Sensitivity to market risk.

9 Q Okay. And as part of an exam, would examiners ask to
10 look at certain loans?

11 A Yes.

12 Q Do they look at every single loan that the bank has?

13 A No, we sample them.

14 Q And is part of the examination to look at what the
15 purpose of the loan is?

16 A Yes.

17 Q And is that important?

18 A Yes, it is.

19 Q Okay. And why?

20 A Well it might make a difference as to how the loan is
21 risk weighted, for example.

22 Q Okay. Now in the time that you were the case manager,
23 was it ever brought to your attention that any purpose for any
24 loan that was being reviewed was to purchase Nova stock?

25 A No.

1 Q If such an example had come up during any of the exams,
2 would that require additional review?

3 A Yes. We would likely review that.

4 Q Now was the purpose of an exam to then match up loans to
5 investors, was that part of the exam?

6 A No.

7 Q You mentioned that there are obviously six areas where a
8 bank is examined, and one of them is in the CAMELS rating, is
9 the C for Capital?

10 A Right.

11 Q And what is Capital?

12 A Capital is funds that are invested into the bank and they
13 protect the bank against any losses they might have.

14 Q And are there certain levels that in which a bank is --
15 has their capital levels determined?

16 A Yes, at the time there were three ratios. Three primary
17 ratios, and there's minimums for each one.

18 Q Okay. And were there sort of descriptions for meeting
19 those ratios, such as well capitalized, adequate --

20 A Yes.

21 Q -- capitalized, and under capitalized?

22 A Yes.

23 Q Okay. And so those words also matched up to certain
24 ratios that the bank had to maintain?

25 A Yes.

1 Q Now in addition to examinations that the FDIC would
2 periodically do, as well as the Pennsylvania Department of
3 Banking on Nova Bank, or for any financial institution, are
4 they also -- are there also -- is there also self-reporting
5 requirements?

6 A Yes. There is.

7 Q And what does that mean, that may be self-explanatory,
8 but what does self-reporting mean?

9 A It's a report that they submit to us quarterly.

10 Q Okay.

11 A And it has various, you know, different numbers outlined.

12 Q Okay. And in this -- what are these self-reports called?

13 A It's called a call report.

14 Q Okay. And is that the bank actually putting forth the
15 information that it has?

16 A Yes.

17 Q And how often are call reports prepared by a bank?

18 A Quarterly.

19 Q Okay. And when you say quarterly, can you tell the jury
20 please what those dates are?

21 A Yes. It's March 31st, June 30th, September 30th and
22 December 31st of every year.

23 Q And are call reports kept in the normal course of
24 business at the FDIC, once they're prepared by a financial
25 institution?

1 A Yes.

2 Q And are -- is the information within a call report, some
3 of that information made public?

4 A Yes.

5 Q All right. I'd like to show you what's been marked as
6 Government's Exhibits 8, 13, 54, 93 and 164.

7 MS. BARRY: And, Your Honor, if I may bring up hard
8 copies to the witness?

9 THE COURT: Yes. Could you repeat those numbers?

10 MS. BARRY: Yes, Your Honor. Eight, 13, 54, 93 and
11 164.

12 THE COURT: Thank you.

13 BY MS. BARRY:

14 Q If you take a look at those exhibits, what is
15 Government's Exhibit 8?

16 A It's the Nova Bank's call report for December 31st, 2008.

17 Q And how about Government's Exhibit 13?

18 A It's Nova Bank's call report for March 31st, 2009.

19 Q How about Government's Exhibit 54?

20 A It's the bank's call report for June 30th, 2009.

21 Q And exhibit 93, what is that please?

22 A The bank's call report for September 30th, 2009.

23 Q And finally, Government's Exhibit 164 what is that,
24 please?

25 A That's Nova Bank's call report for December 31st, 2009.

1 MS. BARRY: Your Honor the Government would move for
2 the admission of Government's Exhibit 8, 13, 54, 93 and 164 at
3 this time.

4 MR. EGAN: No objection.

5 THE COURT: It is admitted.

6 MS. BARRY: Okay.

7 BY MS. BARRY:

8 Q And, again, these call reports are information -- contain
9 information that is made available to the public, is that
10 right?

11 A Some of it, yes.

12 Q Now in 2008, were you aware of the Trouble Asset Relief
13 Program?

14 A Yes.

15 Q And was the Trouble Asset Relief Program?

16 A I was where the Government was injecting capital funds
17 into the bank, if they wanted them.

18 Q Okay.

19 A To help strengthen them.

20 Q Okay. And was that part of TARP, known as the Capital
21 Purchase Program?

22 A Yes.

23 Q Now do you know whether or not Nova Bank submitted a TARP
24 application to receive TARP money under the CPP?

25 A Yes, they did.

1 Q And approximately when did you become involved with
2 Nova's TARP application?

3 A Towards the end. I guess September -- well over the
4 summer and September -- the last part of the year, of '09.

5 Q Okay. And in 2008 and 2009, who was the bank president?

6 A Brian Hartline.

7 Q And who was your main points of contact regarding the
8 TARP application?

9 A It was CFO, Jeff Hanuscin, and president Hartline.

10 Q During the course of the TARP application process, was
11 there a time period where you were having more communication
12 with Mr. Hartline than Mr. Hanuscin?

13 A Yes, towards the end.

14 Q Okay. And, again, when you say towards the end, are you
15 -- if the application as submitted in October of 2008, when
16 you say towards the end, you're talking about sometime from,
17 what, in 2009?

18 A Yes.

19 Q Okay. Now did you -- were you the primary person
20 responsible for gathering information from Nova Bank that
21 would be considered for the TARP application?

22 A Yes.

23 Q And once you received -- well who told you what kind of
24 information was being requested from TARP, or the CPP council?

25 A Well I had a counterpart in Washington, Chuck Hunter, and

1 he would tell me what they -- what kind of information they
2 needed.

3 Q Okay.

4 A And I would then contact the bank and obtain it.

5 Q Okay. And when you contacted the bank, who did you speak
6 with?

7 A Either Mr. Hartline, Jeff Hanuscin, or sometimes Kim
8 Hartline.

9 Q And who is Kim Hartline?

10 A She's the bank's secretary.

11 Q And is she also married to Mr. Hartline?

12 A Yes.

13 Q Now from the time that Nova's applications began to be
14 processed, do you know whether or not the CPP Council had
15 concerns about the application?

16 A Yes, they did.

17 Q Okay. I'd like to show you what's been marked as
18 Government's Exhibit 10.

19 MS. BARRY: And if this could please be displayed
20 just to the witness at this time? And if we could just make
21 that a little larger for Ms. Koch to be able to see. Okay.

22 BY MS. BARRY:

23 Q Looking at Government's Exhibit 10, what is this
24 document?

25 A This is where Chuck Hunter was relaying concerns that the

1 TARP Council had with the bank.

2 Q Okay. And so is this an email?

3 A Yes.

4 Q And let me ask you this, during -- when you work
5 currently and back in 2009, was email communication a normal
6 way that you conducted business?

7 A Yes.

8 Q And what is the date of this email?

9 A February 9th, 2009.

10 Q Okay. And what is -- and, again, it's from Chuck Hunter?

11 A Um-hum.

12 Q And it's relating --

13 THE COURT: Please say yes or no.

14 THE WITNESS: Yes.

15 THE COURT: Thank you.

16 THE WITNESS: I'm sorry.

17 BY MS. BARRY:

18 Q And it's -- the subject matter is Nova Financial
19 Holdings, Inc., Nova Bank in Pennsylvania business TARP
20 application.

21 A Right.

22 Q Is that the subject line?

23 A Yes.

24 MS. BARRY: Your Honor the Government would move for
25 the admission of Government's Exhibit 10.

1 MR. EGAN: No objection.

2 THE COURT: Admitted.

3 MS. BARRY: Okay. May it be published, Your Honor?

4 THE COURT: Yes.

5 BY MS. BARRY:

6 Q Now looking at this email from Chuck Hunter, and, again,
7 he's the person who is going to relay the information you
8 receive from the bank to the CPP Council, correct?

9 A Yes.

10 Q So he works for the FDIC too?

11 A Yes.

12 Q And looking at these -- looking at the first sentence,
13 what does he say to you?

14 A (Reading)

15 "Capital levels throughout the organization --"

16 Q No, no. I'm sorry, the first sentence, if you could just
17 read that, please.

18 A Oh.

19 "Treasury has a number of issues with Nova's TARP
20 application."

21 Q Okay. And it's, unfortunately, Treasury has some --

22 A Unfortunately.

23 Q Okay. And then looking at the three bullet points, is it
24 fair to briefly summarize that the three areas they're
25 concerned about are capital levels, the lead bank asset

1 quality earnings and liquidity ratings, and the classified
2 asset ratios for both financial institutions?

3 A Yes.

4 Q And when they're talking about both financial
5 institutions, did you know at that time, or in and around that
6 time that Nova Bank had purchased another bank called
7 Pennsylvania Business Bank?

8 A Yes.

9 Q Okay. So now the combination of these two banks has
10 raised concerns, is that fair to say?

11 A Yes.

12 Q Now once you receive this email in February -- on
13 February 9th of 2009, did -- what did you do?

14 A I contacted the bank to see if they could give me updated
15 -- they wanted updated capital ratios and items like that.

16 Q Okay. So you contacted the bank, correct?

17 A Yes.

18 Q And who did you speak with about these initial concerns
19 in February of 2009?

20 A I believe it was Brian Hartline.

21 Q Okay. And I'd like to show you now what's been marked as
22 Government's Exhibit 11.

23 MS. BARRY: And if this would just be shown to the
24 witness at this time?

25 BY MS. BARRY:

1 Q Looking at Government's Exhibit 11, what is this
2 document?

3 A It is where the bank is giving me more information to
4 relay to Washington so they can relay it to the TARP Council.

5 Q Okay. Is this a series of emails?

6 A Yes.

7 Q Okay. And, again, are these -- is this in response to
8 Mr. Hunter's February 9, 2009 email?

9 A Yes.

10 Q Okay.

11 MS. BARRY: Your Honor, the Government would move
12 for the admission of Government's Exhibit 11.

13 MR. EGAN: No objection.

14 THE COURT: Admitted.

15 BY MS. BARRY:

16 Q Okay. And if we could just take a look at the second
17 email which is from you to Chuck Hunter, do you see that
18 portion of the --

19 MS. BARRY: And, I'm sorry, Your Honor, may it be
20 published?

21 THE COURT: Granted.

22 MS. BARRY: Thank you.

23 BY MS. BARRY:

24 Q Looking at that February 13th, 2009 email to Chuck
25 Hunter, it's that portion above there --

1 A Right.

2 Q -- do you see that? And so what do you say in response
3 to his initial email?

4 A That I got additional information that the council could
5 consider.

6 Q And who did you get the additional information from?

7 A Mr. Hartline.

8 Q Okay. And looking now at the body, or the second -- the
9 majority of the email, is this now the bullet point that was
10 from Mr. Hunter's original email, and then an explanation that
11 follows? So, for example, under the bullet point, capital
12 levels throughout the organization, which was the -- in the
13 original Chuck Hunter email, is there now a response to that
14 particular concern?

15 A Yes. In the following paragraph after the bullet point.

16 Q And, again, is this information that you put in as a
17 response, based on your conversation with Mr. Hartline?

18 A Yes.

19 Q Okay. And when it discusses the capital, addressing the
20 capital level concerns, is there -- did Mr. Hartline tell you,
21 at least in paragraph -- I'm sorry, in the fourth sentence:

22 "The additional capital contributed to the banks was
23 enough to keep them both well capitalized and resulted in
24 12/31/08 tier one leverage."

25 And then it gives a number of ratios, all of which

1 appear to make the bank well capitalized, is that correct?

2 A That's right.

3 Q And that most of the capital was used to purchase
4 Pennsylvania Business Bank, correct?

5 A Yes.

6 Q And, again, if we can look now to the next bullet point
7 with "Lead asset quality earnings and liquidity ratings were
8 of concern." Again, there's an explanation that's underneath
9 that bullet point, correct?

10 A Um-hum. Yes.

11 Q And, again, who provided you with that information?

12 A Mr. Hartline.

13 Q And going further, to the third point, "The classified
14 asset ratios of both financial institutions were of concern."
15 Again, is there an explanation addressing the concerns that
16 the CPP Council has?

17 A Yes.

18 Q Okay. And who provided you with that information?

19 A Mr. Hartline.

20 Q Okay. And, again, you relayed this to Chuck Hunter in
21 order -- did you relay to Chuck Hunter, all of this
22 information?

23 A Yes.

24 Q Okay. And what was your expectation by relaying it to
25 Mr. Hunter?

1 A That he would report it to the council, the TARP Council.

2 Q Now at the time that the TARP application was pending,
3 was there something that you became aware of that happened at
4 the holding company, Nova's holding company, or parent company
5 Nova Financial Holdings, that affected the bank's capital?

6 A Yes.

7 Q And what happened to Nova's well capitalized status?

8 A Well there was a bunch of securities which had fallen
9 below investment grade, which required them to hold more
10 capital.

11 Q Okay. And because they had to hold more capital, what
12 happened to the capital levels at the bank?

13 A They fell below well capitalized.

14 Q Okay. So did the bank then go from well capitalized to
15 adequately capitalized as the TARP application was pending?

16 A Yes.

17 Q And did the bank actually have to reflect this change in
18 capital in its March 2009 call report?

19 A Yes.

20 Q And was the fact that the bank had gone from well
21 capitalized to adequately capitalized, going to affect it's
22 TARP application?

23 A Yes. Because they were only giving money out to banks
24 that were well-capitalized before they got the additional
25 capital funds.

1 Q Did you have conversations with Mr. Hartline about the
2 fact that the bank had fallen from well-capitalized to
3 adequately capitalized?

4 A Yes.

5 Q And was he concerned?

6 A Yes.

7 Q And was he concerned about that fact because he knew it
8 may affect their TARP application?

9 MR. EGAN: Objection.

10 THE COURT: Sustained.

11 BY MS. BARRY:

12 Q Did he -- did Mr. Hartline tell you whether or not he
13 knew that the -- that the new capital levels would affect his
14 TARP application?

15 MR. EGAN: Same objection.

16 THE COURT: Overruled. You may answer that
17 question, ma'am.

18 THE WITNESS: Okay. Thank you. Yes.

19 BY MS. BARRY:

20 Q So he knew?

21 A Yes.

22 Q Did Mr. Hartline advise you about the bank's response to
23 the fact that it had fallen to only adequately capitalized
24 versus well capitalized?

25 A Well he said he had a large investor that could put in an

1 additional 15 million -- minimum of 15 million to bring the
2 bank back to well capitalized.

3 Q Okay. Now I'd like to show you what's been marked as
4 Government's Exhibit 21. And what is Government's Exhibit
5 21?

6 A It's a May 26, 2009 email from Chuck Hunter to myself
7 asking for additional information on the sub investment
8 quality securities, and a status of the bank's efforts to
9 raise capital.

10 Q Okay. So when Mr. Hartline told you that one of the ways
11 they could address the bank's capital was a large investor, is
12 that fair to say?

13 A Yes.

14 Q Okay. And so did you relay that information to Mr.
15 Hunter?

16 A Yes.

17 Q Had Mr. Hunter -- well let me ask you this. Looking at
18 Government's Exhibit 21, does that first mail at the bottom
19 from you to Mr. Hunter, is that you relying the information
20 about the investor, this potential investor Mr. Hartline told
21 you about?

22 A Some general information, yes.

23 Q Okay.

24 MS. BARRY: Your Honor the Government would move for
25 the admission of Exhibit 21.

1 MR. EGAN: No objection.

2 THE COURT: Admitted.

3 MS. BARRY: May it be published, sir?

4 THE COURT: It may.

5 MS. BARRY: Thank you.

6 BY MS. BARRY:

7 Q So if we take a look at that -- the bottom email in this
8 email chain, what do you write to Mr. Hunter on May 26, 2009?

9 A That Mr. Hartline had relayed that he had a large
10 investor who could -- who was interested in investing \$15
11 million into the bank.

12 Q Well do you ask whether or not they need -- "how are you
13 with the TARP application," is that what you write?

14 A Yes. And if they need anything else.

15 Q Okay. And, by the way, can you read what you say?

16 A (Reading)

17 "By the way, president Hartline left me a message
18 that they have an individual who wants to invest 15 million
19 into the bank. Unfortunately, it's not in escrow yet."

20 Q Now at this point, they have fallen to -- their capital
21 levels had changed?

22 A Yes.

23 Q Okay. And so once you relay that information to Mr.
24 Hunter, does he respond to your email later that same day on
25 May 26, 2009?

1 A Yes. He outlined some additional information we would
2 need.

3 Q Okay. And if you could, the second bullet point, would
4 you read that, please?

5 A (Reading)

6 "He was looking for the status of the bank's efforts
7 to raise capital, including as much information as possible on
8 the likely investors, the type of instruments likely to be
9 issued, et cetera?"

10 Q And looking at the next sentence, what does he say? If
11 you can read it.

12 A (Reading)

13 "I will phone you or email you tomorrow with more
14 specifics. But in the interim it would be in the bank's best
15 interest to provide as much information on the \$15 million
16 investor as possible."

17 Q And can you just read the rest of the email there?

18 A Sure.

19 "If we can present strong evidence that the bank has
20 attracted that much in private capital, all other issues
21 become more manageable. For example, with an additional \$15
22 million in capital, proper risk weighing of the seven
23 investments would not cause a capital deficiency, the
24 adversely classified ratio could decline, earnings ability to
25 service TARP plus TPS could become less of an issue, et

1 cetera."

2 Q Okay. So to the extent that Mr. Hartline knew that TARP
3 funding would not be given to a bank that was not well
4 capitalized, this \$15 million was seen as a solution?

5 MR. EGAN: Objection.

6 THE COURT: Sustained.

7 BY MS. BARRY:

8 Q Was this \$15 million -- did he tell you that this was a
9 solution to the fact that they had become only adequately
10 capitalized?

11 MR. EGAN: Objection. It's still leading, Your
12 Honor.

13 THE COURT: Sustained. Counsel, please.

14 BY MS. BARRY:

15 Q What did Mr. Hartline tell you about this \$15 million?

16 A He thought it would bring them back to well capitalized.

17 Q Okay. And according to this email from Mr. Hunter, that
18 was very important, because any concerns from CPP council
19 could be addressed?

20 A Yes.

21 Q Once Brian Hartline told you that there was this
22 potential investor that would give -- invest at least \$15
23 million into the bank, did you advise him of any steps that
24 needed to be taken by the bank in order for him to make that
25 kind of investment?

1 A Oh, yes, they had to file a change in control application
2 with the Fed and with the State of Pennsylvania.

3 Q And did you tell Mr. Hartline that they needed to do
4 that?

5 A Yes.

6 Q Now I'd like to show you what's been marked as
7 Government's Exhibit 22.

8 MS. BARRY: And if this would just be shown to the
9 witness, please?

10 BY MS. BARRY:

11 Q And what is Government's Exhibit 22?

12 A It's a May 26, 2009 email from Mr. Hartline to myself.

13 Q And is that email in response to an email that you had
14 sent earlier that day?

15 A Yes.

16 Q Okay.

17 MS. BARRY: Your Honor, the Government moves for the
18 admission of Exhibit 22.

19 MR. EGAN: No objection.

20 THE COURT: Admitted.

21 MS. BARRY: May it be published?

22 THE COURT: Yes.

23 MS. BARRY: Thank you.

24 BY MS. BARRY:

25 Q Now if we could focus on the first email that you sent,

1 I'm sorry, the first email that Ms. Koch sent. So this is May
2 26, 2009, right?

3 A Yes.

4 Q Okay. And this is to Brian Hartline?

5 A Yes.

6 Q And who is copied on this email?

7 A Kim Hartline.

8 Q And would you please read the first two paragraphs?

9 A (Reading)

10 "Hi, Mr. Hartline, I received your message today.
11 This is great news of a potential private investor. If the
12 investment is in the holding company, then you would not need
13 to send an application to the FDIC, but the Federal Reserve
14 should get a change in control application."

15 Continue?

16 Q Yes, please.

17 A (Reading)

18 "I spoke to Chuck Hunter, the person in D.C. who is
19 presenting your application to the TARP Committee. He
20 indicated that it would be in your best interest to forward
21 whatever information you could pass along about the private
22 investor would be helpful. However, you may not be at the
23 point where you feel comfortable sharing that information."

24 Q Okay. And how about that last sentence on this page?

25 A (Reading)

1 "Chuck informed me that he will not be going to
2 committee this week as planned, but early next week."

3 Q And so this information -- were you gathering this
4 information so that Mr. Hunter could present everything to the
5 CPP Council related to Nova Bank and addressing all of its
6 concerns?

7 A Yes.

8 Q And so did Mr. Hartline then respond to this email from
9 you?

10 A Yes.

11 Q Okay. And let's take a look at what Mr. Hartline told
12 you. Okay. And could you please read the first couple of
13 sentences of that first full paragraph?

14 A (Reading)

15 "Good afternoon, Lisa. Thanks for your response.
16 Please find attached the personal financial statements for the
17 potential investor. I am providing you this information so
18 you understand this investor is real and can offer this level
19 of investment. I would prefer this information go no further
20 until I get a firm understanding how much he will invest."

21 Continue?

22 Q Sure.

23 A (Reading)

24 "We are speaking with the Fed and State Banking
25 Department on the process to get him approved. After we

1 explain everything involved in the process, he may change his
2 mind and stay under 9.9 percent."

3 Q Okay. And then in the next sentence, does he say his
4 original thought was to invest 15 million, which would take
5 him to approximately a 16.5 percent ownership?

6 A Yes.

7 Q Okay. And so with this email, did he attach information
8 about this potential investor?

9 A I believe so.

10 Q Okay. And if we could take a look at the third page of
11 Exhibit 22? And who -- what information did he attach?

12 A Biography on Mr. George Levin.

13 Q Okay. And so is Mr. Levin now being identified as the
14 investor who is going to make this \$15 million investment?

15 A Yes.

16 Q Okay. And does he also attach Mr. Levin's financial
17 statements?

18 A I believe so.

19 Q Okay. And if we look at the last page, that's his -- Mr.
20 Levin's financial statements, and it indicates total assets of
21 approximately \$364,334,369.39?

22 A Yes.

23 Q Okay. Do you relay this information to Chuck Hunter?

24 A Yes.

25 Q And what is your expectation that Mr. Hunter is going to

1 do with this information?

2 A That he would share it with the TARP Council.

3 Q Okay. Now I'd like you please to take a look at what's
4 been marked as Government's Exhibit 28. Do you have that in
5 front of you?

6 MS. BARRY: If you could please show that just to
7 the witness?

8 BY MS. BARRY:

9 Q And what is Government Exhibit 28?

10 A It is an email I believe from Jeff Hanuscin who was the
11 CFO of Nova Bank.

12 Q Okay. And who was it to?

13 A Me.

14 Q And when is it dated?

15 A June 2nd, 2009.

16 Q And what is it regarding?

17 A Their investments --

18 Q I'm sorry, in the subject --

19 A TARP application.

20 MS. BARRY: Your Honor, the Government moves for the
21 admission of Government's Exhibit 28.

22 MR. EGAN: No objection.

23 THE COURT: Admitted.

24 MS. BARRY: May it be published, Your Honor?

25 THE COURT: Yes.

1 BY MS. BARRY:

2 Q All right. Looking at this memo to you from Jeff
3 Hanuscin, in the first paragraph can you read what he writes
4 to you?

5 A That they've analyzed their investment --

6 Q Excuse me. I'm sorry. Can you just read that first
7 paragraph, please?

8 A (Reading)

9 "Per your request, we have analyzed our investment
10 portfolio as of March 31st, 2009 for direct credit substitutes
11 for investments not eligible for the ratings based approach.
12 Item one. Based on the results, it appears that Nova has
13 understated its March 2009 risk weighted assets by 58.4
14 million. Therefore, reducing risk weighted capital to 8.82
15 percent from 10.24 percent as reported on the call report."

16 Q Okay. Can you continue reading the next paragraph?

17 A (Reading)

18 "Management believes the adequate capital level
19 should be short lived with the anticipated private capital
20 raised projected to close prior to June 30th, 2009.
21 Currently, an individual has expressed interest to invest \$15
22 million in Nova Financial Holdings. The investment is
23 dependent upon regulatory approval of his investment, the
24 Treasury Department approving Nova to sell preferred stock
25 through the TARP program, and the approval of the DVFG

1 transaction."

2 Q Okay. So, again, as -- does Mr. Hanuscin tell you that
3 the bank will address the adequately capitalized levels with
4 this private investor?

5 MR. EGAN: Objection.

6 THE COURT: Counsel, could you rephrase?

7 BY MS. BARRY:

8 Q Looking at the first sentence, does Mr. Hanuscin tell you
9 management believes the "adequate capital" levels should be
10 short lived with the anticipated private capital raised
11 projected to close prior to June 30, 2009?"

12 A Yes.

13 Q And currently an individual has expressed interest to
14 invest \$15 million in Nova Financial Holdings?

15 A Yes.

16 Q And, again, at this point, you are aware of who that
17 investor is, correct?

18 A Yes.

19 Q And who is the investor?

20 A George Levin.

21 Q Okay. Now in this memo, Mr. Hanuscin provides several
22 attachments, correct? If you need the hard copy this is --
23 I'm happy to provide it to you.

24 A No, I don't need it. Thanks. Yes, he does.

25 Q Okay. Let's look at the -- let's just go back to that

1 first page and read the second to last sentence. Where it
2 starts, "I enclose."

3 A (Reading)

4 "Enclosed for your review are copies of DVFG's first
5 quarter unaudited financial statements to reflect that they
6 continue to perform well in this economic environment. I also
7 enclose a copy of a letter from Ballamor Capital Management
8 which sets forth their capital raising intentions."

9 Q Okay. And if we could then go to the second page of
10 Government's Exhibit 28. And who is this letter from?

11 A Ballamor Capital Management.

12 Q And who is this letter to?

13 A To Mr. Hartline.

14 Q Okay. And at the end, who signs this letter?

15 A Barry Bekkedam.

16 Q And had you -- and did you know who Barry Bekkedam was?

17 A At one time I believed he was a director of the holding
18 company.

19 Q Okay. Now looking at the letter that Mr. Hanuscin
20 provides to you, and can you read after "Dear Brian" what that
21 first paragraph says?

22 A (Reading)

23 "I would like to confirm that one or more investment
24 advisory clients of Ballamor Capital Management, Inc., are
25 prepared to invest 15 million into Nova Financial Holdings,

1 Inc. initially, and to broaden that investment up to \$40
2 million in 2009."

3 Q Okay. Can you read the second paragraph, please?

4 A Our investors have committed to us that they wish to
5 participate in the Nova investment at the present time,
6 provided that Nova's current application for TARP funding is
7 approved and the pending DVFG transaction is also approved.
8 We feel the proposed transactions will provide additional
9 capital and significant ongoing revenue to make the investment
10 in Nova an anticipated success."

11 Q And to the extent that Ballamor has this \$15 million to
12 invest in Nova Financial Holdings, does Mr. Bekkedam represent
13 when they hope to have the funds in escrow?

14 MR. EGAN: Object to the form of the question,
15 Ballamor.

16 THE COURT: Sustained.

17 BY MS. BARRY:

18 Q If we could go to the end of this letter from Mr.
19 Bekkedam, please?

20 A Okay.

21 Q And what does -- can you just read the last part of the
22 last sentence -- actually, just read that whole sentence,
23 please, the last sentence, "I will keep you."

24 A (Reading)

25 "I will keep you apprised of our progress,

1 understanding that we are shooting to have funds in the escrow
2 account by June 30th, 2009."

3 Q Okay. And very -- yours truly, and what -- who signs it?

4 A Barry Bekkedam.

5 Q Okay. And who's copied on this letter?

6 A Larry Rovin.

7 Q Okay. And the information that Mr. Hanuscin provides to
8 you, what do you do with it?

9 A I provide it to Chuck Hunter.

10 Q And what is your expectation on providing this
11 information to Chuck Hunter?

12 A That he's going to present it to the TARP Council.

13 Q Okay. And I'd like you to look at what's been marked as
14 Government's Exhibit 29, please. What is Government's Exhibit
15 29?

16 A It's an email from myself to Chuck Hunter on June 4th,
17 2009.

18 Q Okay. And then is there also a reply to your email?

19 A Yes.

20 Q Okay.

21 MS. BARRY: Your Honor, the Government moves for the
22 admission of Government's Exhibit 29.

23 MR. EGAN: No objection.

24 THE COURT: Admitted.

25 MS. BARRY: May it be published?

1 THE COURT: Yes.

2 BY MS. BARRY:

3 Q If we take a look please at the email that you sent to
4 Mr. Hunter. And can you read that first paragraph, what do
5 you write?

6 A (Reading)

7 "Chuck, I spoke with Brian Hartline he just wanted
8 to reiterate that despite the setback with the risk based
9 capital the bank is moving forward with a capital raise.
10 They've explained the set back to the large \$15 million
11 investor, and he is still interested in making the
12 investment."

13 Q Okay. And does he also indicate that they will amend
14 their 3/31/09 call report?

15 A Yes.

16 Q And does Mr. Hunter then respond to this email?

17 A Yes.

18 Q Okay. And what -- what does he say to you? If you could
19 just read it, it's a pretty short email.

20 A (Reading)

21 "Thank you, Lisa. That is more good news about
22 reducing the broker deposits, anyway. I'm hoping to be
23 familiar with the bank's capital calculations after adjusting
24 for those investments accounted for as direct credit
25 substitutes. That way I can discuss what their capital ratios

1 will be after they get the 15 million. So if you can please
2 have the bank send whatever -- what they used to calculate the
3 ratios they provided yesterday."

4 Q Okay. If we go back to -- and so Mr. Hunter's responding
5 to what you wrote to them?

6 A Yes.

7 Q Okay. And looking at your email again, and after
8 providing this information about what you talked about with
9 Mr. Hartline, what do you write in the last sentence?

10 A (Reading)

11 "Based on the above, I think this institution would
12 make a good candidate for a TARP approval, contingent on them
13 raising capital, since a capital raise is presently in the
14 works."

15 Q Okay. And did you have conversations with Mr. Hartline
16 about a potential contingency on approval for TARP?

17 A Yes.

18 Q Okay. And I'd like you to take a look now at
19 Government's Exhibit 31. Again, you had had and not -- this
20 isn't related to this particular exhibit, but you had had --
21 did you have conversations with Mr. Hartline about a
22 contingency for the TARP application -- for the TARP approval?

23 A Yes.

24 Q Okay. And did these discussions come about based on Mr.
25 Hartline's representations to you that there was an individual

1 who could inject \$15 million of capital?

2 MR. EGAN: Objection to leading.

3 THE COURT: Sustained.

4 BY MS. BARRY:

5 Q Was -- how did those conversations come about with
6 respect to a contingency?

7 A Because they had an investor lined up that was going to
8 put 15 million into the bank.

9 Q Okay. And if you take a look at Government's Exhibit 31,
10 what is Government's Exhibit 31?

11 A It's an email from myself to my boss Julie Howland.

12 Q Okay. And what are you discussing with Ms. Howland?

13 A That Chuck got approval for Nova Bank's TARP application,
14 provided they raise 15 million in capital.

15 Q All right.

16 MS. BARRY: Your Honor, the Government would move
17 for the admission of Government's Exhibit 31.

18 MR. EGAN: No objection.

19 THE COURT: It's admitted.

20 MS. BARRY: May it be published, Your Honor?

21 THE COURT: Yes.

22 MS. BARRY: Thank you.

23 BY MS. BARRY:

24 Q All right. Looking at this portion of the email, if you
25 could -- now what is the date of this email?

1 A June 10th, 2009.

2 Q And if you could just read, it's a short email, what you
3 say to your boss?

4 A (Reading)

5 "Hi, Julie. I spoke to Chuck Hunter. He presented
6 Nova's application for TARP to the committee today. They
7 voted to approve with a contingency that the bank raise a
8 minimum of \$15 million in capital. Chuck indicated it still
9 has to go through a review process at the Treasury, but it's
10 likely to get the nod."

11 Q Okay. And if we look at the email above that one, what
12 does -- does Ms. Howland respond?

13 A (Reading)

14 "Good news. Not sure what Nova will say."

15 Q Okay. And when -- what do you understand her to mean?

16 A Whether they could meet the contingency.

17 Q Okay. And do you respond to that email?

18 A Yes.

19 Q And what do you say in response to it?

20 A (Reading)

21 "They will be fine with it. As I was gathering
22 additional information for Chuck, I spoke to Mr. Hartline
23 about the possibility of Chuck presenting it as a contingency
24 if it looked like it was going to be declined, and they were
25 okay with that, because they are raising capital as we speak,

1 with one large investor wanting to invest at least 15
2 million."

3 Q Okay. Did you have any conversations with Mr. Hartline
4 after CPP Council had approved with the \$15 million
5 contingency?

6 A I probably waited for them to get the final approval,
7 because it had to go through one more layer.

8 Q Okay. So you had no -- once you knew that CPP Council
9 had agreed to the contingency, did you have any conversations
10 with Mr. Hartline about it?

11 A Yes. I assume -- I'm sure I did.

12 Q Well did Mr. Hartline keep you updated on whether or not
13 any of the \$15 million for that contingency was being raised?

14 A Yes.

15 Q Okay. So what did he tell you about raising that \$15
16 million?

17 A Well he said that they had 5 million.

18 Q Okay.

19 A That was put in escrow.

20 Q Okay. And when did he tell you that the bank had
21 received \$5 million of the 15 million contingency?

22 A I'm not sure of the date.

23 Q Okay. Well let me show you what's been marked as
24 Government's Exhibit 57. And what is Government's Exhibit
25 57?

1 A It's letting Chuck know that they got \$5 million in
2 capital.

3 Q Okay.

4 A On June 30th, '09.

5 MS. BARRY: Your Honor, the Government moves for the
6 admission of Government's Exhibit 57.

7 MR. EGAN: No objection.

8 THE COURT: Admitted.

9 MS. BARRY: May it be published, sir?

10 THE COURT: Yes.

11 BY MS. BARRY:

12 Q Okay. So this is from you?

13 A Yes.

14 Q And to Chuck Hunter?

15 A Yes.

16 Q And dated Thursday, July 2nd, 2009, correct?

17 A Yes.

18 Q All right. And what's the one line?

19 A (Reading)

20 "Chuck, I just wanted to let you know that Nova got
21 a \$5 million capital infusion on June 30th, '09."

22 Q Okay. And what is your expectation of giving this
23 information to Mr. Hunter?

24 A That he would relay it to the TARP Council.

25 Q Okay. Because -- because there was a \$15 million

1 contingency?

2 MR. EGAN: Objection.

3 THE COURT: Sustained.

4 BY MS. BARRY:

5 Q Well why would you -- why would he relay it to TARP?

6 A Well, you know, they were getting the 15 million, and I'm
7 not sure, but the 5 million may have put them back above well
8 capitalized.

9 Q Okay. So --

10 A I don't remember.

11 Q But Mr. Hartline is letting you know that, that they
12 raised 5 million?

13 MR. EGAN: Objection. Letting know what?

14 MS. BARRY: That he raised -- that the bank had
15 raised \$5 million.

16 THE WITNESS: Yes.

17 BY MS. BARRY:

18 Q Okay. When Mr. Hartline told you that the bank had
19 raised \$5 million as of June 30th, 2009, did he ever tell you
20 that any of the \$5 million was borrowed?

21 A No.

22 Q Did he ever tell you that any of the \$5 million of this
23 new capital was money borrowed from the bank?

24 A No.

25 Q June 30, 2009, is that the end of a quarter?

1 A Yes.

2 Q And so if they could report additional capital by the end
3 of the quarter, would that effect the call report?

4 MR. EGAN: Objection.

5 MS. BARRY: She's an FDIC employee.

6 THE COURT: I'll overrule it.

7 MR. EGAN: It's still leading, Your Honor.

8 THE COURT: I understand. Overruled.

9 MS. BARRY: I'll rephrase, Your Honor. I'm happy to
10 do that.

11 THE COURT: All right.

12 BY MS. BARRY:

13 Q Is -- what is the -- what's significant about the date,
14 June 30th?

15 A Because it's the quarter end.

16 Q Okay. And in previous emails, had it been indicated that
17 Nova Bank was hoping to get the \$15 million, or to be well
18 capitalized by June 30th?

19 A Yes.

20 Q Okay. Is June 30th, that is the end of a quarter, also a
21 time when Nova Bank would be filing its call reports?

22 A Yes.

23 Q And, again, are the call reports information -- some of
24 the information from the call reports made public so that
25 individuals could look up the state of Nova Bank?

1 A Yes.

2 MS. BARRY: May I have a moment, Your Honor?

3 THE COURT: Sure.

4 (Pause)

5 BY MS. BARRY:

6 Q If the -- I had asked you if Mr. Hartline told you that
7 any of this \$5 million, whether it was borrowed, or borrowed
8 from the bank, and he never told you that, did he?

9 A No.

10 Q Okay. If he had told you that, is that something you
11 would have told Mr. Hunter?

12 MR. EGAN: Objection.

13 THE COURT: Just don't, please -- sustained.

14 BY MS. BARRY:

15 Q Any information that Mr. Hartline gave you related to
16 this \$5 million, would you have forwarded that information to
17 Mr. Hunter?

18 A Yes.

19 Q All right. If we could now take a look at Government's
20 Exhibit 61.

21 And what is Government's Exhibit 61?

22 A It's an email from my boss Julie Howland to myself.

23 Q Okay. And is this a series of emails?

24 A Yes.

25 Q Okay. And are you asked for information based on these

1 series of emails, in the second email?

2 If you'd like to look at the paper copy with
3 multiple pages, I'm happy to show it to you.

4 A No. I guess they were -- my boss was asking me the
5 status of the capital raise.

6 Q Okay. The capital raise at Nova?

7 A Yes.

8 Q Okay.

9 MS. BARRY: Your Honor, the Government moves for the
10 admission of Exhibit 61.

11 MR. EGAN: Your Honor, may we have a sidebar on that
12 issue?

13 THE COURT: Surely.

14 (Sidebar Conference)

15 THE COURT: Yes, sir.

16 MR. EGAN: Your Honor, my objection to this is that
17 this is a -- there's series of emails that she's not on. It
18 goes on for quite some time actually, a couple of pages.

19 THE COURT: You said that she's not on.

20 MR. EGAN: She's not on. Not only --

21 THE COURT: Ms. Barry is not -- hold on, let me
22 understand what you're saying, she's not on.

23 MR. EGAN: Ms. Koch.

24 THE COURT: Okay.

25 MR. EGAN: So there's a series of emails. She comes

1 up at the last -- she gets a couple of these emails. But
2 there's one from (inaudible) to Mr. Baxter, one from Ms.
3 Course to Mr. Baxter. One from Mr. Glugert to Ms. Course.
4 These are not emails that go to her.

5 Your Honor, there's been no indication that these
6 emails are going to her, and we would object to them being --
7 this exhibit.

8 MS. BARRY: Your Honor, she -- it's an email string
9 where they have put her on an email to respond, and so the
10 email contains all of those emails. I'm not going to go into
11 all of the emails. I'm going to go to what she responded.

12 MR. EGAN: I still have the same objection to the
13 rest of those emails coming in without these witnesses being
14 available for us to cross on what those subjects were.

15 UNIDENTIFIED SPEAKER: I don't have any objection to
16 what (inaudible).

17 THE COURT: I would suggest that ultimately, in the
18 event the jury needs to see these things, that you redact it
19 in impertinent part, because they certainly are competent
20 evidence in terms of this witness.

21 MR. EGAN: Absolutely, Your Honor.

22 MS. BARRY: Okay.

23 THE COURT: We'll do that in the event we need to.
24 Let me just ask you one more question, I'm sorry. It's 12:20
25 now, how much more do you have to go with this witness?

1 MS. BARRY: We have a little bit more to go. But I
2 thought I was just coming to a natural end after about the
3 next two emails. And I'll just indicate to you, and it will
4 be about 12:30 I think when we stop.

5 THE COURT: Thank you.

6 (Sidebar Ended)

7 THE COURT: If you hear a stomach growling, it's
8 mine, don't worry about it. We'll get lunch very shortly.

9 MS. BARRY: I'll try to make this quick. If we,
10 Your Honor, may we publish just the first page of Government's
11 Exhibit 61.

12 MR. EGAN: No objection, Your Honor.

13 THE COURT: Granted.

14 BY MS. BARRY:

15 Q And if we could just focus in on your email, which is
16 that second email.

17 A Okay.

18 Q And you're writing to Bill Baxter?

19 A Yes.

20 Q And whose Bill Baxter?

21 A He was the Washington office representative in charge of
22 the TARP Program.

23 Q Okay. And so what do you write to Mr. Baxter?

24 A (Reading)

25 "I was out sick most of the week and Julie sent this

1 forward yesterday regarding Nova's TARP application. I just
2 wanted to clarify that the bank did receive a \$5 million
3 capital injection on June 30th. I believe it was from the
4 large investor, I'm trying to clarify that now. I will
5 forward details when I receive them."

6 Q Okay. And looking at Government's 61A. Do you follow up
7 with a confirmation on the information you received?

8 A Yes, Mr. Baxter.

9 MS. BARRY: And, Your Honor, the Government moves
10 for Government's Exhibit 61A.

11 MR. EGAN: No objection.

12 THE COURT: Granted.

13 BY MS. BARRY:

14 Q So looking at Government's Exhibit 61A, and that's the
15 same day July 17, 2009?

16 A Yes.

17 Q Okay. And what do you write?

18 A (Reading)

19 "Hi Bill, I did confirm with the bank that Mr.
20 Levin, the large investor, is still interested in making the
21 investment. He did make the bulk of the \$5 million
22 investment, which occurred on June 30th, '09. He is committed
23 to a total of 15 million. He's waiting for the bank to get
24 approval for TARP before he makes his remaining \$10 million
25 investment. The capital will be is to bring the bank back to

1 well capitalized and for future growth plans."

2 Q And so who did you speak -- did you speak with anyone at
3 Nova Bank in order to confirm this -- the information related
4 to Mr. Levin and the \$5 million he put in as of June 30th,
5 2009?

6 A Yes. I would have spoken to the bank.

7 Q And who did you speak to?

8 A I don't remember, it may have been Brian or Jeff.

9 Q Okay. So -- and I'd like you now to take a look at
10 what's been marked as Government's Exhibit 62. What is
11 Government's Exhibit 62?

12 A It's an email from Kim Hartline to myself on July 17th,
13 2009, with a cc to Mr. Hartline.

14 Q Okay. And what is the subject?

15 A Levin's subscription agreement.

16 Q Is that the subject or the attachment?

17 A Nova investor, I'm sorry.

18 MS. BARRY: Your Honor, the Government moves for the
19 admission of Government's Exhibit 62.

20 MR. EGAN: No objection.

21 THE COURT: It's admitted.

22 MS. BARRY: May it be published?

23 THE COURT: Yes.

24 BY MS. BARRY:

25 Q Okay. Let's take a look -- again this is from Kim

1 Hartline?

2 A Yes.

3 Q Okay. And what is her role as you understand it at the
4 bank?

5 A She's Brian's secretary.

6 Q Okay. And is it dated July 17th, 2009, which is the same
7 date from the previous exhibit 61 and 61A?

8 A I don't know. I'd have to go back to it.

9 Q Okay.

10 MS. BARRY: If you could just go back to 61A for a
11 moment, please?

12 BY MS. BARRY:

13 Q Okay. What's the date?

14 A Yes. The same date.

15 Q Same day?

16 A July 17th.

17 Q So you had spoken with Mr. Hartline on that day, correct?

18 A I spoke with somebody from the bank.

19 Q Okay. And then you receive an email on that same day
20 from Mrs. Hartline?

21 A Yes.

22 Q And if you would please read what Mrs. Hartline says to
23 you in this email?

24 A (Reading)

25 "Brian asked me to send you the attached copy of Mr.

1 Levin's subscription agreement, \$5 million of his investment
2 was received by us on June 30th. The balance of the
3 investment, 13 million, will be provided on Mr. Levin's
4 approval by the Fed and the Pennsylvania Department of
5 Banking, and our approval of TARP funds. Even if the approval
6 is contingent on his capital, as previously discussed."

7 Q Okay. And so does she then, the second page is an
8 attachment of Mr. Levin's subscription agreement? Is that
9 supposed to be what it is?

10 A Yes.

11 Q Okay. And in this email, or in the subscription
12 agreement, does Mrs. Hartline tell you that any of the \$5
13 million from George Levin that was received on June 30th, 2009
14 was borrowed?

15 A No.

16 Q Does she tell you in this email, or any attachment to
17 this email, whether or not the \$5 million from George Levin
18 received on June 30th, 2009 was money that was borrowed from
19 the bank?

20 A No.

21 Q Up until this point, July 17, 2009, did anyone, Mr.
22 Hanuscin, Mr. Hartline, Mrs. Hartline, anyone from the bank
23 advise you that the \$5 million investment from George Levin
24 received by the bank on June 30th, 2009 was borrowed?

25 A No.

1 Q Did anyone tell you that the money was borrowed from the
2 bank?

3 MR. EGAN: Objection, asked and answered.

4 THE COURT: Sustained.

5 MS. BARRY: May I have a moment, Your Honor?

6 THE COURT: Surely.

7 (Pause)

8 BY MS. BARRY:

9 Q Was it important for you to know whether or not the money
10 was borrowed?

11 MR. EGAN: Objection.

12 THE COURT: Overruled.

13 BY MS. BARRY:

14 Q You may answer.

15 A Oh. Okay. Yes, that would be important.

16 Q Okay. Was it important for you to know whether any of
17 the money was borrowed from the bank?

18 A Yes.

19 Q Any information that you knew about the loan from -- or,
20 I'm sorry, the investment from Mr. Levin to the bank, would
21 you forward that to Chuck Hunter or someone in D.C.?

22 A Yes.

23 Q And do you know whether or not that information would be
24 used to assess the TARP application?

25 MR. EGAN: Objection.

1 THE COURT: Overruled.

2 THE WITNESS: Yes.

3 MS. BARRY: Your Honor, at this point, I think it
4 would be a good time to take a break, if it's amenable to the
5 Court?

6 THE COURT: All right. We will reconvene at 1:45,
7 1:45 this afternoon. Again, avoid any newspaper accounts,
8 television accounts, radio accounts, if they even exist.
9 Enjoy your lunch. We'll see you at 1:45. Thank you.

10 (Jury Exits)

11 THE COURT: All right. You may step down. Watch
12 your step, please.

13 THE COURT: Counsel, you may be seated. And the
14 audience as well. We're still in session.

15 MR. EGAN: This will be brief, Your Honor. The
16 repeated leading is reaching the point where I have to
17 interject continuously. I don't want to be obstreperous in
18 front of the jury, but I would just ask that the Court say
19 something to the Government about it because --

20 THE COURT: You just did.

21 MR. EGAN: -- they know what they're doing.

22 MS. BARRY: Thank you, Your Honor.

23 THE COURT: All right. Thank you.

24 MR. EGAN: Thank you.

25 THE COURT: All right.

1 (Court in recess 12:26 p.m. to 1:59 p.m.)

2 THE COURT: Are you ready?

3 MR. EGAN: Yes, Your Honor.

4 MS. BARRY: Your Honor, when the jury returns, we've
5 come to an agreement on certain exhibits, stipulations for the
6 voice mail messages that are going to be played this
7 afternoon.

8 THE COURT: All right.

9 MS. BARRY: So may I read those out to the jury
10 prior to returning to my direct examination?

11 THE COURT: Your pleasure.

12 MS. BARRY: Thank you.

13 THE CLERK: All rise.

14 (Jury Enters)

15 THE COURT: Good afternoon.

16 JURORS: Good afternoon.

17 THE COURT: Counsel, you may proceed.

18 MS. BARRY: Thank you, Your Honor. The parties have
19 reached the following stipulations. That Government's Exhibit
20 200 is a voice mail message received on August 19th, 2009 at
21 5:38 p.m. That Government's Exhibit 201 is a voice mail
22 message received on December 14th, 2009 at 2:17 p.m. That
23 Government's Exhibit 202 is a voice mail message received on
24 December 15th, 2009 at 9:31 a.m. That Government's Exhibit
25 203 is a voice mail received on December 15, 2009 at 1:58 p.m.

Koch - Direct/Bar

116

1 That Government's Exhibit 204 is a voice mail message received
2 on December 15th, 2009 at -- also at 1:58 p.m. And that
3 Government's Exhibit 205 is a voice mail message received on
4 December 16, 2009 at 4:30 p.m.

5 THE COURT: So stipulated?

6 MR. EGAN: Yes, Your Honor.

7 MR. ENGLE: Yes, Your Honor.

8 THE COURT: All right. You may continue.

9 MS. BARRY: Thank you, Your Honor. We would ask Ms.
10 Koch to return to the stand.

11 (Pause)

12 MS. BARRY: May I proceed, Your Honor?

13 THE COURT: Yes.

14 MS. BARRY: Thank you.

15 BY MS. BARRY:

16 Q Ms. Koch, prior to the lunch break we ended with Exhibit
17 62, which was a July 17th email from Mrs. Hartline regarding
18 the \$5 million that was received as capital on June 30th,
19 2009.

20 A Right.

21 Q And so what I'd like to do at this point, is just
22 actually go back to May of 2009, and I'd like you please to
23 take a look at Government's Exhibit 17. And do you see
24 Government's Exhibit 17?

25 A Yes.

1 Q And is this a memo to you?

2 A Yes.

3 Q And from who is the memo?

4 A Jeff Hanuscin.

5 Q And what is it regarding?

6 A Information that -- additional information that we
7 requested for the TARP application.

8 Q Okay. And what is the date?

9 A May 1st, 2009.

10 Q Okay. And --

11 MS. BARRY: Your Honor, the Government moves for the
12 admission of Government's Exhibit 17.

13 MR. EGAN: No objection.

14 THE COURT: It's admitted.

15 MS. BARRY: And may it be published, Your Honor?

16 THE COURT: Yes.

17 BY MS. BARRY:

18 Q And just briefly, again, this is regarding response to
19 information requested for TARP application?

20 A Yes.

21 Q Okay. And, again, who is this from?

22 A Jeff Hanuscin, who is the CFO of Nova.

23 Q Okay. Now if you would please take a look at
24 Government's Exhibit 19. And what is Government's Exhibit 19?

25 A It's a email from Chuck Hunter to me requesting an update

1 on Nova's status to raise the additional capital.

2 Q Okay. And is -- does it appear that that top email is
3 the last one in a series of emails?

4 A Yes.

5 Q Okay.

6 MS. BARRY: Your Honor, the Government moves for the
7 admission of Government's Exhibit 19.

8 MR. EGAN: No objection.

9 THE COURT: Granted.

10 MS. BARRY: And may it be published?

11 THE COURT: Yes.

12 MS. BARRY: Thank you.

13 BY MS. BARRY:

14 Q Okay. And just looking at the top email from Mr. Hunter
15 to you, and this is dated May 18th, 2009, is that the date on
16 the email?

17 A May 18th, 2009.

18 Q And could you just read what Mr. Hunter -- the
19 information Mr. Hunter is seeking on May 18th, 2009?

20 A (Reading)

21 "Who are the potential investors, what type of
22 instruments will be offered, and any outside assistant such as
23 a consulting firm to be used to help raise the capital?"

24 Q Thank you. Now I'd like to go back to where we left off
25 before the break, which was sometime in July of 2009. During

1 that time period in that summer, would you hear from Mr.
2 Hartline?

3 A Yes.

4 Q Okay.

5 MS. BARRY: And I'd like now, Your Honor, to play
6 Government's Exhibit 200, which is one of the voice mails that
7 was stipulated to, a voice mail received on August 19th of
8 2009.

9 THE COURT: You may proceed.

10 MS. BARRY: Thank you.

11 (Audio played 2:07 p.m. to 2:08 p.m.)

12 BY MS. BARRY:

13 Q And who is calling you and leaving you a message in this
14 voice mail?

15 A Mr. Hartline.

16 Q Okay. And would Mr. Hartline periodically leave you
17 voice mail messages?

18 A Yeah, most of my bankers do. Yes.

19 Q Now you had mentioned before, and I believe we saw it in
20 one of the emails, that you advised Mr. Hartline that they
21 needed -- the bank needed to file a change in control
22 application regarding Mr. Levin's full investment in the bank.
23 Do you recall that?

24 A Yes.

25 Q Okay. And what is a change in control application?

1 A If somebody is going to own over 10 percent of the bank's
2 stock, it has to go through an approval process.

3 Q Okay. And did you have any understanding whether or not
4 Nova Bank had indeed filed a CIC application?

5 A I -- yes, at one point they did.

6 Q Okay. And do you know whether or not it was an
7 application that was filed -- well who was the application
8 filed with?

9 A The State of Pennsylvania Banking Department and the
10 Federal Reserve.

11 Q Okay. So now I'd like to show you what's been marked as
12 Government's Exhibit 77, please. And looking at Government's
13 Exhibit 77, what is this?

14 A It's an email from myself to Tyler Bland, he had wanted
15 an update.

16 Q Okay.

17 MS. BARRY: And, Your Honor, the Government moves
18 for the admission of Government's Exhibit 77.

19 MR. EGAN: No objection.

20 THE COURT: All right.

21 MS. BARRY: May it be published, Your Honor?

22 THE COURT: Granted.

23 BY MS. BARRY:

24 Q Okay. Now if we take a look at Government's Exhibit 77,
25 the bottom email, or what I will refer to as the first email,

1 okay, and you're writing to Tyler Bland -- who is Tyler Bland?

2 A He's the field supervisor for the Philadelphia area
3 office.

4 Q Okay. And then there are several individuals who are
5 copied, including Mr. Hunter, is that fair to say?

6 A Yes.

7 Q Okay. And what is the date of your email?

8 A August 26, 2009.

9 Q And would you please -- and what is the subject of the
10 email?

11 A Nova Bank TARP.

12 Q And would you please read what you wrote to these
13 individuals?

14 A (Reading)

15 "Tyler I just received a call from Jeff Hanuscin of
16 Nova Bank. He wanted me to know that the bank got approved
17 for TARP funds, conditioned on the bank receiving the full 15
18 million investment from Mr. George Levin. An application for
19 a change in control is with the Fed now."

20 Q Okay. And if we look now at the very first email on this
21 chain, this is from an individual -- who is it, the very top
22 email?

23 A Joe Moretz (phonetic).

24 Q Okay. And are you copied on this email?

25 A Yes.

1 Q And what does Mr. Moretz write in is email?

2 A That they also had a change in control application
3 pending for Mr. Levin.

4 Q Okay. And what does the Pennsylvania Department of
5 Banking refer to its change in control application?

6 A Section 112.

7 Q Okay. During the -- during the following time period
8 after receiving these -- the emails -- these emails which are
9 dated, and, I'm sorry, this one from Mr. Moretz, what is the
10 date on that?

11 A Tuesday September 1st, 2009.

12 Q Okay. In and around September and thereafter, are you --
13 is anyone from the bank providing you with information on the
14 bank's raising of capital?

15 A I would ask the bank periodically if Washington wanted to
16 know the status.

17 Q Okay. And why would Washington want to know the status?

18 A Because they had an approved application that the funds
19 had not been disbursed yet.

20 Q Okay.

21 A They wanted to know if they had achieved the contingency.

22 Q Now I'd like you to take a look at what's been marked as
23 Government's Exhibit 90. What is Government's Exhibit 90? A
24 It's a series of emails.

25 Q Okay. I'm sorry.

1 A From September 22nd, 2009.

2 Q Okay.

3 MS. BARRY: Your Honor, the Government --

4 BY MS. BARRY:

5 Q And are you the recipient or the author of some of these
6 emails?

7 A Yes.

8 MS. BARRY: Your Honor, the Government moves for the
9 admission of Government's Exhibit 90.

10 MR. EGAN: No objection.

11 THE COURT: Granted.

12 MS. BARRY: May it be published?

13 THE COURT: Yes.

14 BY MS. BARRY:

15 Q Now if we can take a look at the third email on this page
16 from Tyler Bland. And what is the subject line say?

17 A "U.S. Treasury 606 Nova Financial Holdings and capital
18 raise."

19 Q Okay. And what is -- what does Mr. Bland ask you?

20 A He wants me to confirm that the bank had received the
21 additional 10 million.

22 Q Okay. And does he also say, "We'll need something in
23 writing from the bank to confirm?"

24 A Yes.

25 Q Okay. And do you respond to this email?

1 A Yes.

2 Q Okay.

3 MS. BARRY: And if we focus in on the reply email
4 from you.

5 BY MS. BARRY:

6 Q And, again, there's several, it's back to Tyler Bland.
7 Who is copied on this email?

8 A Edwin Lloyd, Jim Watkins, Bill Baxter and Kevin Glugert.

9 Q And who are these individuals?

10 A Ed Lloyd is the ARD for Pennsylvania. He was.

11 Q And what is -- I'm sorry, what does ARD stand for?

12 A Oh, assistant regional director.

13 Q Okay.

14 A Jim Watkins is somebody from Washington, as well as Bill
15 Baxter. And Kevin Gluckert was heading the TARP applications
16 in the New York Regional Office.

17 Q Okay. And so what do you write to these individuals, if
18 you could just read your email, please?

19 A That they haven't received the capital yet, because they
20 were still waiting for the change in control.

21 Q Ms. Koch, can you please read the email that you wrote?

22 A Oh, sure.

23 "Hi Tyler, I just spoke to Brian Hartline, the bank
24 has not received the capital yet. They are waiting for the
25 Fed to approve Mr. Levin under a change in control

1 application. The Fed indicated they have not yet gotten the
2 background check back from the FBI. Once he is approved, the
3 capital will be invested. Brian indicated that he spoke to
4 Treasury and they are fine with the delay. They are drawing
5 up all the paperwork for when the approval is received."

6 Q Okay. So, again, this information that you were relaying
7 came from Mr. Hartline, based on this email?

8 A Yes.

9 Q And when Mr. Bland asked to confirm that Nova has in fact
10 received the 10 million in outside matching capital, did you
11 understand that to mean the additional 10 million for the 15
12 million contingency?

13 A Yes.

14 Q Now I'd like you please to take a look at what's been
15 marked as Government's Exhibit 97. And what is Government's
16 Exhibit 97?

17 A It's an email advising Edwin Lloyd that the TARP was
18 approved but it has not yet been disbursed.

19 Q Okay. And, again, is Government's Exhibit 97 a series of
20 emails, or what sometimes are referred to as email string, or
21 email chain?

22 A Yes.

23 Q Okay. And are you the recipient, or the author of -- of
24 these emails?

25 A Some of them, yes.

1 Q Okay. So -- and specifically the first three emails on
2 Government's Exhibit 97, page one?

3 A Yes.

4 Q Okay.

5 MS. BARRY: Your Honor, the Government moves for the
6 admission of Government's Exhibit 97.

7 MR. EGAN: Your Honor, with the same exception we
8 had previously, I think Ms. Barry's addressed it by just
9 saying page one.

10 THE COURT: All right. Thank you very much.

11 MS. BARRY: Thank you, Your Honor. And may it be
12 published?

13 THE COURT: Yes.

14 BY MS. BARRY:

15 Q Would you please read the email that you wrote to Mr.
16 Edwin Lloyd, which it looks like it's the second email in the
17 -- on that page.

18 A (Reading)

19 "Hi, Ed. Nova Bank has received approval of their
20 TARP conditional on them receiving another 10 million in
21 capital. They have a large investor who has already placed 5
22 million in the bank, but the bank is waiting for FRB approval
23 for a change in control application to receive the other 10
24 million from the investor. Last I heard, the FRB did not have
25 a problem, they were just processing the application. I will

1 get in touch with them on Monday when I get back to see where
2 the application is."

3 Q Okay. And when did you write this email?

4 A October 14th, 2009.

5 Q And the information that you passed along to Edwin Lloyd,
6 where did you receive that information? Or from whom, I guess
7 the better question is.

8 A I think it was just information that I already knew.

9 Q From whom?

10 A From Mr. Hartline.

11 Q Okay. Now I'd like you to take a look at Government's
12 Exhibit 120. And what is Government's Exhibit 120, please?

13 A It's an email string again.

14 Q Between whom?

15 A Between myself and Ray Harper from the Pennsylvania
16 Department of Banking.

17 Q Okay.

18 MS. BARRY: And, Your Honor, the Government would
19 move for the admission of Government's Exhibit 120.

20 MR. EGAN: No objection.

21 THE COURT: Granted.

22 BY MS. BARRY:

23 Q Now if we could please take a look at your email that you
24 authored, which is the bottom email, or the first email in
25 that string?

1 A All right.

2 Q And what is the subject of the email?

3 A Nova.

4 Q Okay. And, again, what is the date of this email?

5 A October 30th, 2009.

6 MS. BARRY: I'm sorry, if we could look at the
7 bottom email -- or -- yeah, the first one in time, please.
8 The first email, "Hi, Ray." Could we blow that part up? I'm
9 sorry, it's the email dated on Friday October 30th to Ray
10 Harper from Lisa Koch. The bottom email, please? Yes. Thank
11 you so much. Okay.

12 BY MS. BARRY:

13 Q And what are you -- what do you tell Ray?

14 A I told him I projected forward if they got the additional
15 capital what their new capital ratios would be.

16 Q Okay. And so did somebody assist you with preparing
17 these capital ratios?

18 A I'm not sure. It may have been Jeff from the bank.

19 Q Okay. And when you say Jeff from the bank?

20 A Jeff the CFO, Hanuscin.

21 Q Okay. And so you specifically -- what do you
22 specifically say? "Hi, Ray," and what's the next sentence?

23 A (Reading)

24 "I did some calculations based on their 9/30/09 call
25 report."

1 Q Okay. So let me just stop you right there about that.

2 Okay. So based on their 9/30/09 call report, so that would be
3 information that the bank has put on their call report related
4 to all of the assets, loans, capital, whatever they have that
5 they would report on the call report?

6 A Yes.

7 Q Okay. And then it says, what do you say next?

8 A (Reading)

9 "With 10.3 million in additional capital, the ratios
10 would be tier one leverage 8.87, tier one risk based 8.91,
11 total risk base 10.16, which is well capitalized."

12 Q Okay. So these ratios, do they base -- do they include
13 the \$5 million that was received as capital on June 30th,
14 2009?

15 A Yes. They were already included.

16 Q And then there's another calculation that's done if the
17 \$13 million in TARP funds is added on, is that right?

18 A Yes.

19 Q Okay. And then those levels would keep it at well
20 capitalized?

21 A Yes.

22 Q Okay. So the 10.3 additional capital is being -- I'm
23 sorry, let me withdraw the question.

24 A Okay.

25 Q Now, again, this email's October 30, 2009?

1 A Yes.

2 Q Okay. And when it came to the \$5 million that was
3 included in capital to prepare these ratios, did anyone at the
4 bank tell you that any of that money had been borrowed?

5 MR. EGAN: Objection. Asked and answered.

6 THE WITNESS: No.

7 THE COURT: Sustained.

8 BY MS. BARRY:

9 Q Now around this time period of October to November of
10 2009, do you know whether or not there was any kind of
11 downgrade of the bank?

12 A There was -- I'm not sure of the exact date, but there
13 was a state -- the State Banking Department was in there and
14 they had downgraded it.

15 Q Okay. And I'm going to ask you to look at what's been
16 marked as Government's Exhibit 125. And when we talk -- and
17 we may have been just kind of assuming that the word is -- is
18 self-evident, but what does downgrade mean?

19 A Well the banks are rated, all the components are rated
20 from one to five. And one being the strongest and five being
21 the weakest. And so that probably meant that the composite
22 rating, the overall rating in the bank had gone down.

23 Q Okay. So if you're at a one and then you become a two,
24 that's a downgrade.

25 A Yes.

1 Q And if you're two to three, a downgrade, and so forth?

2 A Yes.

3 Q Okay. And because one is the best and five is the worst?

4 A Yes.

5 Q And when it comes -- when you're talking about these
6 composite ratings, is that what's determined based on the
7 CAMELS, what we talked about before?

8 A The CAMELS component.

9 Q Okay. If we take a look at Government's Exhibit 125,
10 what is 125?

11 A It's an email string between myself and Ray Harper.

12 Q Okay. And what is the date of these emails?

13 A November 11th, 2009.

14 Q Okay.

15 MS. BARRY: And, Your Honor, the Government would
16 move for the admission of Government's Exhibit 125.

17 MR. EGAN: No objection.

18 THE COURT: Granted.

19 MS. BARRY: Okay.

20 BY MS. BARRY:

21 Q Now looking at your email that you authored, you're
22 referring to a meeting, what meeting was that?

23 A It was the exit meeting for the State -- the State's
24 examination.

25 Q Okay. And were you invited to that meeting?

1 A Yes.

2 Q Okay. Was Mr. Hartline in attendance at that meeting?

3 A Yes.

4 Q And you write -- can you read the first sentence of the
5 second paragraph? Or the first full paragraph.

6 A On the bottom?

7 Q Yes, it says "However."

8 A (Reading)

9 "However, the president did not mention that Mr.
10 Levin was no longer going to invest. All he said was that
11 they needed 3 million more. I hope he shared that with the
12 EIC prior to the meeting. However, I have a feeling he did
13 not, because she had it capital rated at two. The bank is
14 under capitalized, and they need to raise more money before
15 they can secure the TARP funds. There's no way that's a two,
16 unless they get the funds in before the report of examine is
17 finished processing."

18 Q Okay. Just your take?

19 A Yes.

20 Q Okay. So when you say the president, who are you
21 referring to?

22 A Mr. Hartline.

23 Q And November 11th, at least at the meeting that you
24 attended, he did not mention that Mr. Levin was not going to
25 invest?

1 A No.

2 Q Did you have any conversations with Mr. Hartline that
3 they needed more capital to secure the TARP funds?

4 A Well it was understood.

5 Q Okay. At this meeting in -- that you attended on
6 November 11th, 2008, did Mr. Hartline mention anything about
7 Mr. Levin's financial condition?

8 A I don't think so.

9 Q I'd like you please to take a look at what's been marked
10 as Government's Exhibit 133A. And what is Government's
11 Exhibit 133A?

12 A This is a standard letter that we provide the banks when
13 they're being downgraded to a three, four or five. And that's
14 just to let them know that they shouldn't make any large
15 changes in the balance sheet of the bank before they get their
16 report of exam.

17 Q Okay. And what is the date of this letter?

18 A November 10th, 2009.

19 Q And who is the person it's addressed to?

20 A Mr. Hartline.

21 Q And are you mentioned in the letter itself?

22 A Yes, at the end I'm mentioned as a contact for the bank.

23 Q Okay.

24 A In case he has any questions.

25 MS. BARRY: And, Your Honor, the Government moves

1 for the admission of Government's Exhibit 133A.

2 MR. EGAN: No objection.

3 THE COURT: Granted.

4 MS. BARRY: And may it be published, Your Honor?

5 THE COURT: Yes.

6 BY MS. BARRY:

7 Q So, again, looking at this letter, the date is -- what's
8 the date?

9 A November 10th, 2009.

10 Q Okay. And it's from what institutions?

11 A It's from the FDIC and the State Banking Department.

12 Q Okay. And, again, if we take a look at the letter, the
13 second paragraph. And what does that first sentence say?

14 A (Reading)

15 "This letter documents and memorializes that your
16 institution has been tentatively given a composite rating of
17 three, representing a downgrade from the prior examination."

18 Q Okay. Did you have any conversations with Mr. Hartline
19 about the fact that the bank had been downgraded?

20 A Well that's what the meeting was about.

21 Q Did you have any conversations with Mr. Hartline about
22 how the downgrade may affect their pending TARP -- the
23 disbursement of their TARP funds?

24 A I don't remember.

25 Q Okay. Do you know whether or not a downgrade may effect

1 the disbursement of their funds?

2 A Yes.

3 Q Okay.

4 MS. BARRY: And now I'd like to play Government's
5 Exhibit 201 which was stipulated to as a voice mail message
6 from December 14th, 2009 at approximately 2:17 p.m.

7 (Audio played 2:32 p.m. to 2:32 p.m.)

8 BY MS. BARRY:

9 Q And who was that voice mail from?

10 A Mr. Hartline.

11 Q Okay. And in the voice mail he asked -- he said -- he
12 asked about the process to validate capital. What did you
13 understand that to mean?

14 A That they -- that the Treasury wanted the documentation
15 that all the capital funds were in the bank before they would
16 release the TARP funds.

17 Q Okay. And was that the contingent -- the \$15 million
18 contingency?

19 A Yes.

20 Q Now I'd like you to take a look at what's been marked as
21 Government's Exhibit 139. And what is Government's Exhibit
22 139?

23 A It's an email from Federal Reserve, Cynthia Course to
24 Bill Baxter.

25 Q Okay. Are you one of the recipients of this email?

1 A I'm sorry, Bill Baxter forwarded it to me afterwards.

2 Q I'm not sure if this has been moved.

3 MS. BARRY: May I please publish it then, Your
4 Honor. It has already been admitted.

5 THE COURT: Yes, it's been admitted.

6 MS. BARRY: Okay.

7 BY MS. BARRY:

8 Q So just a reminder that this is -- what is the date of
9 this email?

10 A December 14th, 2009.

11 Q Okay. And, again, the voice mail message was also dated
12 December 14th, 2009. So that would be the same day, is that
13 fair to say?

14 A Yes.

15 Q Okay. And you were forwarded this email from Cynthia
16 Course, is that right?

17 A Yes.

18 Q Okay.

19 A Bill Baxter.

20 Q And if we could just look at that -- the first paragraph
21 to Bill, in that next sentence. Okay. And so what -- in the
22 forwarded email from Cynthia Course to Bill Baxter, what does
23 she write?

24 A (Reading)

25 "I understand from the reserve bank that Nova Bank,

1 Nova Financial Holdings has a call with the FDIC plan for this
2 afternoon to discuss its capital raising vis-a-vis its TARP
3 CPP application. On June 10, 2009, the interagency council
4 approved Nova's TARP CPP application, contingent on a \$15
5 million capital raise. Treasury has confirmed that Nova
6 raised part of the capital earlier this year, and they now
7 need to raise just 10 million."

8 Q Okay. And what's the next sentence say?

9 A (Reading)

10 "Nova is tentatively scheduled to close on its TARP
11 CPP on December 22nd, 2009."

12 Q Okay. Now if we could --

13 THE COURT: Why don't we let the jurors stand up and
14 take a --

15 MS. BARRY: Oh, sure.

16 THE COURT: -- leg stretch break?

17 MS. BARRY: Yes, Your Honor.

18 (Pause)

19 THE COURT: All right.

20 MS. BARRY: Thank you, Your Honor. May I proceed?

21 THE COURT: Yes, ma'am.

22 MS. BARRY: Thank you. Now I'd like to play
23 Government's Exhibit 202, which is a voice mail message dated
24 December 15, 2009 at approximately 9:32 a.m. Which has been
25 stipulated to.

1 (Audio played 2:37 p.m. to 2:38 p.m.)

2 BY MS. BARRY:

3 Q And this voice mail message that was from Mrs. Hartline
4 on December 15, 2009, clearly she is asking what else you need
5 in terms of receiving -- getting the disbursement of TARP
6 funds, which is planned for December 22nd, 2009, based on the
7 previous email.

8 A Yes.

9 Q Okay.

10 MS. BARRY: Now if we could play Government's
11 Exhibit 203, which is a voice mail message dated December
12 15th, 2009, at approximately 1:49 p.m.?

13 (Audio played 2:38 p.m. to 2:39 p.m.)

14 BY MS. BARRY:

15 Q This particular -- or this voice mail from Mr. Hartline,
16 did he follow up with information to support that they're a
17 well capitalized institution?

18 MR. EGAN: Objection.

19 THE COURT: Sustained.

20 BY MS. BARRY:

21 Q Do you know whether or not he followed up with you with
22 any information on whether or not this was a well capitalized
23 institution?

24 MR. EGAN: Objection.

25 MS. BARRY: If she knows.

1 MR. EGAN: Your Honor, the question's, what if any
2 information did he provide?

3 THE COURT: I understand. I understand. Just
4 modify the question, please.

5 MS. BARRY: Yes, Your Honor.

6 BY MS. BARRY:

7 Q I'd like to show you what's been marked as Government's
8 Exhibit 140. And what is Government's Exhibit 140?

9 A It's an email from Mr. Hartline dated December 15th, cc
10 Jeffrey Hanuscin, they were sending additional information to
11 I guess prove that they had gotten \$10 million in capital.

12 Q Okay. And so what is the date of this email?

13 A December 15, 2009.

14 Q At what time?

15 A 6:00 p.m.

16 Q And so was this email something that came after you
17 received the voice mail?

18 A I believe so.

19 Q Okay.

20 MS. BARRY: And, Your Honor, the Government moves
21 for the admission of Government's Exhibit 140.

22 MR. EGAN: No objection, Your Honor.

23 THE COURT: Admitted.

24 BY MS. BARRY:

25 Q So if we can take a look at the email itself --

1 MS. BARRY: And, I'm sorry, I don't know if I asked
2 for it to be published. Did I, Your Honor?

3 THE COURT: You did not.

4 MS. BARRY: Okay. May it please be published?

5 THE COURT: Granted.

6 MS. BARRY: Thank you.

7 BY MS. BARRY:

8 Q Can we first -- I'm sorry -- look at the from/to portion
9 of the email? Okay. And who is the email from?

10 A Mr. Hartline.

11 Q And who is it to?

12 A Me.

13 Q And what is the date?

14 A December 15th, 2009.

15 Q At what time?

16 A 6:00.

17 Q And is anyone copied?

18 A Jeff Hanuscin.

19 Q And what is the subject?

20 A Nova.

21 Q And is -- are there attachments to this email?

22 A Yes.

23 Q Okay.

24 MS. BARRY: And if we could now move to the body of
25 the email?

1 BY MS. BARRY:

2 Q And so the first paragraph, Mr. Hartline says:

3 "Sorry for the delay in getting this information to
4 you."

5 Right?

6 A Yes.

7 Q Okay. And what does the first sentence of the second
8 paragraph say?

9 MS. BARRY: And if we could highlight that.

10 THE WITNESS: (Reading)

11 "Nova has met the contingency requirement by raising
12 over \$10 million of capital."

13 BY MS. BARRY:

14 Q Okay.

15 A (Reading)

16 "Nova has demonstrated that it has regained its well
17 capitalized status through its own capital generation, and
18 that the CPP funding will enhance Nova's capital levels and
19 allow us to continue to meet the credit needs of the
20 communities we serve."

21 Q Now looking at just this email, does Mr. Hartline advise
22 you anywhere that this 10 million of capital was -- any
23 portion of it was borrowed?

24 A No.

25 Q Does he mention in this email whether any portion of this

1 \$10 million was borrowed from the bank?

2 A No.

3 Q Would that be an -- is that an important fact?

4 A Yes.

5 Q Okay. And why is it important?

6 A Well capital funds are funds that come from outside the
7 bank. The only way you can generate capital from the bank
8 itself is through retained earnings.

9 Q And if we could please now take a look at the second page
10 of Government's Exhibit 140? And is the second page appears
11 -- well is this a letter?

12 A Yes.

13 Q And to -- who is this letter from?

14 A Brian Hartline.

15 Q Okay. And who is the letter to?

16 A Myself.

17 Q Okay. And can you please read the first sentence?

18 MS. BARRY: And if we could highlight that?

19 THE WITNESS: (Reading)

20 "As you are aware, Nova Financial Holdings, Inc. --"

21 BY MS. BARRY:

22 Q Oh, I'm sorry. I'm sorry, it's not being published.

23 Okay, if you could -- I'm sorry, if you could read that?

24 A (Reading)

25 "As you are aware, Nova Financial Holdings, Inc. has

1 completed raising over \$10 million of common equity, thus
2 achieving the Treasury Department's contingency for Nova to
3 receive its Capital Purchase Program funding."

4 Q Okay. And then is there a description of several
5 attachments to this letter?

6 A Yes.

7 Q Okay. And attachment five, what is that attachment?

8 A A list of investors that put in the 10.2 million.

9 Q And if we could go to the second page? And would you
10 please read those -- the first paragraph there?

11 A (Reading)

12 As a result of conversations held today with the
13 Federal Reserve Bank, it was brought to my attention that in
14 order to qualify for CPP funds, an institution is required to
15 be well capitalized. Please note that Nova and Nova Bank was
16 well capitalized when its application was submitted in October
17 2008, and excluding the calculation for direct credit
18 substitutes for securities below investment grade Nova and
19 Nova Bank would be considered well capitalized."

20 Q And then what -- how about the next sentence?

21 A (Reading)

22 "At this time Nova has raised an appropriate amount
23 of capital to regain its well capitalized status prior to our
24 receipt of CPP funding."

25 Q And now if we could please turn to attachment five, which

1 is page ten of Government's Exhibit 140? Okay. And
2 attachment five was a list of the investors that -- that make
3 up the \$10.2 million in new capital?

4 A Yes.

5 Q Okay. And if we take a look at the section -- the first
6 section is subtotal capital raised through September 30, 2009
7 and deposited with HC approximately -- or it says
8 \$2,551,902.02.

9 A Yes.

10 Q Okay. And then you see the next section, which is the
11 subtotal escrow deposit to receive by October 2009?

12 A Yes.

13 Q Okay. And do you see the individual, Anthony Bonomo
14 capital raise October 30, 2009, \$2,500,000?

15 A Yes.

16 Q Anywhere in the attachments, in the letter or in the
17 email, does Mr. Hartline advise you that this \$2.5 million was
18 borrowed?

19 A No.

20 Q Does he advise you anywhere in the attachments in the
21 letter or in the email whether or not that \$2.5 million was
22 borrowed from the bank?

23 A No.

24 Q Would that be an important fact?

25 A Yes.

1 Q Why would that be an important fact?

2 A Because it wasn't external funds invested in the bank.

3 Q Okay. If you knew that fact, would you pass it along to
4 the people in Washington?

5 A Yes.

6 Q If we look at the second page of that attachment, and it
7 says it's the subtotal escrow deposits received December 2009.
8 And at the bottom there's an individual, Charles Gallab for
9 \$500,000, can you --

10 MS. BARRY: I don't know, Agent Boyer, if you could
11 highlight that just to make it easier for the jurors?

12 BY MS. BARRY:

13 Q Anywhere in this -- in the letter, in the email, or in
14 the attachments does Mr. Hartline advise you that this
15 \$500,000 was borrowed from the bank?

16 A No.

17 Q Would that be an important fact?

18 A Yes.

19 Q Is that a fact that you would have made known to
20 individuals in Washington considering the TARP?

21 A Yes.

22 MS. BARRY: I'd like to play just now what's been
23 marked as Government's Exhibit 204. And it's a voice mail
24 from December 15th, 2009 at approximately 1:49 p.m. And it's
25 been stipulated to.

1 (Audio played 2:50 p.m. to 2:52 p.m.)

2 BY MS. BARRY:

3 Q Now this voice mail that you received, after receiving
4 it, did you contact the bank based on the concerns that Mr.
5 Baxter had?

6 A Yes.

7 Q Okay. And so we showed -- I showed you what was marked
8 as Government's Exhibit 140. Was that in response to some of
9 the concerns you raised with Mr. Hartline about concerns that
10 folks in Washington had about the TARP application?

11 A Yes.

12 Q Okay. Now I'd like you to take a look at what's been
13 marked as Government's Exhibit 144. And looking at
14 Government's Exhibit 144, what is that?

15 A It's an email from Mr. Hartline to myself, and it's cc'd
16 Jeff Hanuscin.

17 Q Okay. And what is the date of this email?

18 A December 16th.

19 Q Okay. So it's the following day?

20 A Yes.

21 Q Okay. At what time?

22 A 7:23 a.m.

23 MS. BARRY: Your Honor, the Government would move
24 for the admission of Government's Exhibit 144.

25 MR. EGAN: No objection.

1 THE COURT: Granted.

2 MS. BARRY: May it be published?

3 THE COURT: Yes. 144?

4 MS. BARRY: Yes, sir.

5 BY MS. BARRY:

6 Q And this email, again, who is it from?

7 A Mr. Hartline.

8 Q When was it sent?

9 A December 16, 2009.

10 Q At what time?

11 A 7:23 a.m.

12 Q And is it --who is it to?

13 A Me.

14 Q And who is copied?

15 A Jeff Hanuscin.

16 Q And what is the subject?

17 A Follow up.

18 Q And are there also attachments to this email?

19 A Yes.

20 Q Okay. And so if you would please read the first sentence
21 and then the first sort of paragraph of -- on this email from
22 Mr. Hartline?

23 A The first paragraph?

24 Q Oh, the first sentence, and then the first paragraph.

25 A (Reading)

1 "I just received word from our attorney that our CPP
2 closing set for December 22nd has been put on hold."

3 Q Okay. And then if you could read the next section?

4 A (Reading)

5 "I am very concerned by the recent events. Nova has
6 only done things to improve its position since being approved
7 for CPP funds. Nova raised 18 million of tier one capital in
8 2008, and raised an additional 15.1 million of tier one
9 capital in 2009. 10 million as the contingency requirement to
10 receive the CPP funds. We've raised our coverage ratio and we
11 have improved our liquidity position."

12 Q In this -- in this email, does Mr. Hartline, and if we
13 could -- you can look at the whole email. Does Mr. Hartline
14 tell you that any of the 15.1 million of tier one capital, 10
15 million as the contingency requirement to receive the CPP
16 funds, was borrowed? Any portion of that was borrowed?

17 A No.

18 Q Did he say any portion of that was borrowed from the
19 bank?

20 A No.

21 Q Would that be an important fact?

22 A Yes.

23 Q Is that information you would have passed along to
24 Washington?

25 A Yes.

1 Q Why is that an important fact?

2 A Because the bank can't loan money to invest in its own
3 capital.

4 Q Okay. And now if you could please take a look at
5 Government's Exhibit 145. And what is Government's Exhibit
6 145?

7 A It's an email from Jeff Hanuscin to myself, and cc Mr.
8 Hartline.

9 Q Okay.

10 MS. BARRY: Your Honor, the Government --

11 BY MS. BARRY:

12 Q And is there an attachment to it?

13 A Yes.

14 MS. BARRY: Your Honor, the Government would move
15 for the admission of Government's Exhibit 145.

16 MR. EGAN: No objection.

17 THE COURT: Admitted.

18 MS. BARRY: May it be published, Your Honor?

19 THE COURT: Granted.

20 BY MS. BARRY:

21 Q All right. If we take a look at the email, again, who is
22 this from?

23 A Jeff Hanuscin.

24 Q And when was it sent?

25 A December 16th, 2009.

1 Q At what time?

2 A 3:45 p.m.

3 Q And are you the recipient?

4 A Yes.

5 Q And what is the one line that Mr. Hanuscin says in his
6 email?

7 A (Reading)

8 "Lisa, here's most of the support for cash received.
9 The remainder will follow shortly."

10 Q Okay. And looking at the second page on cash received.
11 Do you see that? What is the total?

12 A 2.850 million.

13 Q Okay. Now if we could please take a look at what's been
14 marked as Government's Exhibit 146. Looking at Government's
15 Exhibit 146, what is this?

16 A It's an email from Mr. Hartline to me.

17 Q And what's the date?

18 A December 16th, 2009.

19 Q At what time?

20 A 9:05 p.m.

21 Q Okay. And what is the subject?

22 A Approval letter.

23 MS. BARRY: Your Honor, the Government moves for the
24 admission of Exhibit 146.

25 MR. EGAN: No objection.

1 THE COURT: Granted.

2 MS. BARRY: May it be published, Your Honor?

3 THE COURT: Yes.

4 BY MS. BARRY:

5 Q Taking a look at what's been marked as Government's
6 Exhibit 146, again, this is an email from who?

7 A From Mr. Hartline to myself.

8 Q And what is the date?

9 A December 16th, 2009.

10 Q At what time?

11 A 9:05 p.m.

12 Q Okay. And reading the first two -- the first sentence,
13 what does he say?

14 A (Reading)

15 "As noted yesterday, I'm very perplexed by the
16 current situation Nova is in."

17 Q Okay. And if you could read, please, the next little
18 paragraph?

19 A (Reading)

20 "Nova has done everything that has been requested of
21 them to date. We have completed all the paperwork, we have
22 raised 10 million of common equity and we have answered all
23 questions."

24 Q Okay. In this email, does Mr. Hartline tell you that any
25 of the \$10 million of this common equity was money that was

1 borrowed from the bank?

2 A No.

3 Q Would that be an important fact?

4 MR. EGAN: Objection. Your Honor, it's been
5 testified five times.

6 THE COURT: No comments, just objection. The
7 objection's sustained.

8 BY MS. BARRY:

9 Q Now if we could please take a look at what's been marked
10 as Government's Exhibit 147.

11 MS. BARRY: I'm sorry. if I could just have a
12 moment. Your Honor?

13 THE COURT: Surely.

14 (Pause)

15 BY MS. BARRY:

16 Q Government's Exhibit 147, what is Government's Exhibit
17 147?

18 A It's an email from Mr. Hartline to myself.

19 Q Okay. And what is the date?

20 A December 16, 2009.

21 Q At what time?

22 A 11:24 p.m.

23 Q Okay. So is it fair to say it's two hours later from the
24 Government's Exhibit 146?

25 A Yes.

1 Q Okay.

2 MS. BARRY: And, Your Honor, the Government moves
3 for the admission of Government's Exhibit 147.

4 MR. EGAN: No objection.

5 THE COURT: Admitted.

6 MS. BARRY: May it be published?

7 THE COURT: Granted.

8 BY MS. BARRY:

9 Q Looking again at the to/from line of the email 147, who
10 is this from?

11 A Mr. Hartline.

12 Q When was it sent?

13 A December 16th, 2009.

14 Q At what time?

15 A 11:24 p.m.

16 Q And are there attachments to this email?

17 A Yes.

18 Q Okay. And, again, what does Mr. Hartline say in the
19 second sentence?

20 A (Reading)

21 "Nova has done everything that has been requested of
22 it to date. We have completed all paperwork, we have raised
23 10 million of common equity, and we have answered all
24 questions."

25 Q Okay. So he's reiterating that?

1 A Yes.

2 Q Okay. Now I'd like you to take a look at what's been
3 marked as Government's Exhibit 151. And what is Government's
4 Exhibit 151?

5 A It's an email.

6 Q From whom?

7 A From Mr. Hartline to myself.

8 Q Okay.

9 MS. BARRY: Your Honor, the Government moves for the
10 admission of Government's Exhibit 151?

11 MR. EGAN: No objection.

12 THE COURT: Granted.

13 BY MS. BARRY:

14 Q And, again, from Mr. Hartline you said to you. What is
15 the date?

16 A December 17th, 2009.

17 Q At what time?

18 A 5:02 p.m.

19 Q And what is the subject?

20 A Any final updates.

21 Q Okay. And when he says any final updates, what do you
22 understand that to mean?

23 A I thought if we had enough information on the capital
24 raise. But at some point myself and Amy Monegro, who was
25 sitting in for my boss, had spoken to Mr. Hartline on the

1 phone and we said that we were going to write the
2 recommendation for a denial.

3 Q Okay. Let's take a look at Government's Exhibit 152.
4 And what is Government's Exhibit 152?

5 A An email.

6 Q Okay. And is it an email chain?

7 A Yes.

8 Q And what's the date of the chain?

9 A December 17th, 2009, 5:08 p.m.

10 Q Okay. And is this between you and -- well who is it
11 between?

12 A It was from Mr. Hartline to myself.

13 Q Okay.

14 MS. BARRY: Your Honor, the Government moves for the
15 admission of Government's Exhibit 152.

16 MR. EGAN: No objection.

17 THE COURT: Admitted.

18 MS. BARRY: May it be published, Your Honor.

19 THE COURT: Granted.

20 BY MS. BARRY:

21 Q Okay. Now looking at the first email in this chain,
22 which would be that bottom of the page, is this what we looked
23 at as the first email in the chain which was Government's
24 Exhibit 151, any final updates?

25 A Yes.

1 Q Okay. And do you respond?

2 A Yes.

3 Q Okay. And what do you respond in the next email in the
4 chain?

5 A I say that:

6 "We really don't have an update."

7 I just got back, I think I was at a meeting or
8 something.

9 "So I'm starting to analyze all the information you
10 provided. I need to provide D.C. with a memo by tomorrow
11 morning with a recommendation. The recommendation will likely
12 be denial, but I also want to provide all the updated
13 information that you and Jeff gave me so that they can fairly
14 assess that. I'll probably be working pretty late tonight. I
15 will put in all the points you included in your emails."

16 Q Okay. So when you are talking about "I also wanted to
17 provide all the updated information that you and Jeff gave me
18 so that they can fairly assess that," what are you referring
19 to?

20 A All the information that -- the attachments and stuff he
21 provided the day before.

22 Q Okay. That Mr. Hartline had provided to you?

23 A Yes.

24 Q And did that also include information that Mr. Hanuscin
25 provided to you?

1 A Yes.

2 Q And now if you could look at the email response from Mr.
3 Hartline? To your email.

4 A (Reading)

5 "Thanks, Lisa. I hate to put you through all of
6 this. I know you're working hard on this. Do you know if we
7 will have a final answer tomorrow? I have investors funds,
8 and if we don't get approved, I don't want to hold them longer
9 than I have to. I'm sure I will have enough fun explaining
10 what happened as it is. Thank you for of your and Amy's help
11 on this."

12 Q Okay. And so when he's saying Amy, is that -- who is
13 that referring to?

14 A That's the woman that was sitting in for Julie Howland,
15 who is my immediate supervisor.

16 Q Okay. And did you just mention her before, was that Amy
17 Monegro?

18 A Yes.

19 Q Okay. And then do you respond to what Mr. Hartline said?
20 In the next email in the chain.

21 A Then I said:

22 "Well the recommendation will go to the council and
23 they will make the final decision. I would assume in the next
24 week or so then either they or I will get back to you. I
25 wouldn't give back any investor funds until that time. Did

1 you get all the funds in today? I would like to be able to
2 include that."

3 Q Okay. And when you say, "did you get all the funds in
4 today," what did you mean?

5 A Well when he sent me the -- they sent me copies of the
6 wires and stuff, and it wasn't complete. So I needed the rest
7 of the documentation for those.

8 Q Okay. And is that information that you were going to
9 provide to Washington --

10 A Yes.

11 Q -- on the decision of whether to disburse TARP funds?

12 A Yes.

13 Q And then does Mr. Hartline send you a reply to what you
14 said?

15 A Yes.

16 Q And can you read Mr. Hartline's email back to you?

17 A (Reading)

18 "Amy said she didn't think you guys could convince
19 FDIC Washington to recommend this to council. She said that
20 she would get back to me after your letter was sent to
21 Washington. I thought this was a short term and an imminent
22 no decision. If the FDIC is not going to recommend, I would
23 like to know ASAP so I can return funds."

24 Q Okay. So at this point you have on December 17th, 2009
25 there's -- you think -- you've -- have you advised Mr.

1 Hartline one way or another about what you thought the
2 recommendation would be?

3 A Yes. I believe Amy spoke to him and said that it was
4 going to recommend for denial. And I had said it in one of my
5 emails.

6 Q Were you still going to provide information to Washington
7 to make sure that they had all the information to make the
8 decision?

9 A Yes.

10 Q And from whom were you receiving information about
11 whether or not Nova had raised the contingency?

12 A From Jeff Hanuscin and Mr. Hartline.

13 Q Okay. And now I'd like you to take a look at what's been
14 marked as Government's Exhibit 153. And what is Government's
15 Exhibit 153?

16 A It's an email from Mr. Hartline to myself and the subject
17 is, any updates.

18 Q Okay. And what is the date of that email?

19 A December 18th, 2009.

20 Q And what is the time of that email?

21 A 9:12 a.m.

22 Q Okay.

23 MS. BARRY: And, Your Honor, the Government moves
24 for the admission of Government Exhibit 153.

25 MR. EGAN: No objection.

1 THE COURT: Admitted.

2 MS. BARRY: May it be published?

3 THE COURT: Granted.

4 BY MS. BARRY:

5 Q So looking at the email, the first email in this chain
6 from Brian Hartline to you, please read the first sentence.

7 A (Reading)

8 "Lisa and Amy, has the FDIC New York finished its
9 recommendation?"

10 Q Please read the second sentence.

11 A (Reading)

12 "I still hold firm that Nova is the poster child for
13 CPP funding. And we should be awarded the funds."

14 Q If we go to the next page of Government's Exhibit 153.
15 And if we could -- if you look at that first -- I'm sorry, the
16 sentence that starts "As you also know, Nova has been able to
17 raise."

18 A (Reading)

19 "As you also know Nova has been able to raise
20 capital during the last two years. Most recently \$10 million
21 was raised to meet the contingent obligation for Nova to
22 receive it's CPP funding."

23 Q Does Brian Hartline mention whether any of that money
24 any portion of that money was borrowed from the bank?

25 A No.

1 Q And if we look at the next email in the chain from you to
2 Bill Baxter, what do you say to Mr. Baxter?

3 A I said:

4 "Hi, Bill, not sure if you're interested, but here's
5 management's plea."

6 Q Okay. And when you say management's plea, management's
7 plea to what?

8 A To get the funding.

9 Q Okay.

10 A For the TARP.

11 Q Now I'd like you to take a look -- and, again, this was
12 December -- this email from Mr. Hartline was December 18th,
13 2009 at 9:12 a.m.?

14 A Yes.

15 Q Okay. Now I'd like you to take a look at Government's
16 Exhibit 156. What is Government's Exhibit 156?

17 A It's an email from Mr. Hartline.

18 Q When is it dated?

19 A December 18th.

20 Q At what time?

21 A 12:11 p.m.

22 MS. BARRY: Your Honor, the Government moves for the
23 admission of Government's Exhibit 156.

24 MR. EGAN: No objection.

25 THE COURT: Admitted.

1 BY MS. BARRY:

2 Q And so looking at this email, is it just -- what does it
3 say in the subject?

4 A (Reading)

5 "Sorry I forgot to confirm this but Nova does have
6 all the funds in."

7 Q Now if we take a look at what's been marked Government's
8 Exhibit 157. And what is 157, please?

9 A An email from Mr. Hartline to myself.

10 Q And when is it dated?

11 A December 18th, 2009.

12 Q At what time?

13 A 4:54 p.m.

14 MS. BARRY: The Government moves for the admission
15 of Government's Exhibit 157.

16 MR. EGAN: No objection.

17 THE COURT: Granted.

18 BY MS. BARRY:

19 Q And looking at this email, what's the date?

20 A December 18th, 2009.

21 Q Okay. At what time?

22 A 4:54 p.m.

23 Q Okay. Is this the third email you're receiving on that
24 day from Mr. Hartline?

25 A Possibly.

1 Q Okay. And what -- what is the subject line?

2 A (Reading)

3 "I need to run, here is my cell phone number if you
4 hear anything."

5 Q Okay. Now I'd like you to take a look at Government's
6 Exhibit 160. Now at this point in time on December -- well on
7 December 18th, 2009 has there been any official word from
8 Washington whether or not Nova was going to be receiving a
9 disbursement of the funds from TARP?

10 A I don't know. I don't think so.

11 Q Okay.

12 A At that point.

13 Q And I'd like you now to take a look at what's been marked
14 as Government's Exhibit 160. And what is Government's Exhibit
15 160?

16 A It's an email from myself to Mr. Hartline.

17 Q Okay. And what's the date?

18 A Sunday December 20th, 2009.

19 Q Okay. And is it more than one email? It's an email
20 string or a chain?

21 A Yes.

22 MS. BARRY: Your Honor, the Government moves for the
23 admission of Government's Exhibit 160.

24 MR. EGAN: No objection.

25 THE COURT: Granted.

1 BY MS. BARRY:

2 Q And your email to Mr. Hartline, that first email, or the
3 bottom email, again, what's the date?

4 A December 20th, 2009.

5 Q Okay. And what are you advising Mr. Hartline?

6 A That I got an email from Chuck Hunter, and he told me
7 that he'll know by Tuesday afternoon what the final decision
8 is.

9 Q Okay. So as of December 20th, there's been no final
10 decision made?

11 A No.

12 Q And now does looking at the first email, or the last
13 email on that chain, who is that from?

14 A Mr. Hartline.

15 Q Okay. And what's the date?

16 A December 21st, 2009.

17 Q Okay. And what time is the email sent approximately?

18 A 12:04 p.m.

19 Q Okay. And what does Mr. Hartline say?

20 A (Reading)

21 "Do you know where we are in the process? Is the
22 application still within the FDIC, or is it going to approval
23 council?"

24 Q Can you read the next sentence, please?

25 A (Reading)

1 "I'm still hopeful that Nova will be approved based
2 on our past actions, current performance, and current economic
3 trends, and Nova is planning accordingly."

4 Q Okay. Can you read the next sentence, please?

5 A (Reading)

6 "I will be getting on a plane at 5 a.m. on Wednesday
7 for a ski vacation. The vacation has been booked for months,
8 so I'm getting all the required information signed today and
9 tomorrow before I leave."

10 Q Okay. And when he says "getting all the required
11 information signed today and tomorrow before I leave," what is
12 your understanding of what he's telling you there?

13 A I think he's --

14 MR. EGAN: Objection. Unless --

15 THE COURT: Sustained.

16 BY MS. BARRY:

17 Q Do you know what the required information would be that
18 he would have sign?

19 A I'm not sure what he would have to sign. Maybe --

20 MR. EGAN: Objection.

21 THE COURT: Sustained.

22 MS. BARRY: Okay.

23 BY MS. BARRY:

24 Q Only if you know.

25 THE COURT: You cannot speculate. Next question,

1 counsel.

2 MS. BARRY: Yes, Your Honor.

3 BY MS. BARRY:

4 Q Do you know whether or not Nova Bank received any TARP
5 funding?

6 A No, they didn't.

7 Q Okay.

8 MS. BARRY: May I have a moment, Your Honor?

9 THE COURT: Yes.

10 (Pause)

11 MS. BARRY: Your Honor, just -- while there was a
12 stipulation to Exhibits 200, 201, 202, 203 and 204, we'd ask
13 that they be moved into evidence -- admitted into evidence.
14 I'm not sure if I technically moved them into evidence.

15 THE COURT: They will be, as redacted as we
16 indicated earlier in terms of the string. Is that correct?

17 MS. BARRY: No. These are the voice mail messages.

18 THE COURT: The voice mail, okay. Fine.

19 MR. EGAN: We have no objection.

20 THE COURT: All right. They are admitted.

21 MS. BARRY: And I would also like to, if I failed to
22 do that move -- formally move for the admission of
23 Government's Exhibit 160.

24 THE COURT: Any objection?

25 MR. EGAN: No, Your Honor.

1 THE COURT: All right. Admitted. Thank you.

2 MS. BARRY: May I have one moment?

3 THE COURT: Surely.

4 MS. BARRY: No further questions at this time.

5 Thank you.

6 THE COURT: All right. Let's take our mid-afternoon
7 break.

8 (Jury Exits)

9 THE COURT: You may step down. Counsel, let me see
10 you at sidebar, please?

11 (Sidebar Conference)

12 THE COURT: I have been eyeing juror number 12.
13 I've been taking some random sample observations and,
14 unfortunately, the overwhelming majority of time he appears to
15 be dozed off. I'm going to speak with him, with your
16 approval. But I'm leaning toward taking him off of this jury
17 because he's already missed, to me, a significant portion of
18 the testimony and the other exhibits in this case.

19 I can do it now or I can wait and give him a
20 opportunity, it's up to you.

21 UNIDENTIFIED COUNSEL: Your Honor, I think you
22 should give him the opportunity, personally.

23 THE COURT: All right.

24 UNIDENTIFIED COUNSEL: Your Honor, I think he should
25 be afforded a opportunity to explain whether or not he's an

1 individual who is listening with his eyes closed or not.

2 There's no offense to Ms. Barry, but the last examination was
3 not exactly the most exciting one in the world.

4 MS. BARRY: What?

5 UNIDENTIFIED COUNSEL: I was waiting the IV coffee
6 to drop over there.

7 THE COURT: Now, now. All right. You're doing a
8 fine job.

9 MS. BARRY: Thank you, Your Honor.

10 UNIDENTIFIED COUNSEL: It was a fine job.

11 UNIDENTIFIED COUNSEL: You drew the short straw.

12 UNIDENTIFIED COUNSEL: I wouldn't mind -- I have not
13 really noticed, but I haven't really been looking in that
14 direction.

15 THE COURT: Yes. I have to check that to maintain
16 the --

17 UNIDENTIFIED COUNSEL: I have seen it, though.

18 THE COURT: All right.

19 MS. BARRY: Thank you.

20 UNIDENTIFIED COUNSEL: Thank you, Your Honor.

21 (Sidebar Ended)

22 (Court in recess 3:21 p.m. to 3:37 p.m.)

23 THE COURT: Are we ready?

24 MR. EGAN: Yes, Your Honor.

25 (Jury Enters)

1 THE COURT: All right. You may be seated. Thank
2 you.

3 CROSS-EXAMINATION

4 BY MR. EGAN:

5 Q At the time that TARP came into existence, you were
6 working for the FDIC, correct?

7 A Yes.

8 Q And you were working as a case manager, I believe you
9 said?

10 A Case manager.

11 Q And a case manager has a lot of responsibility, I assume?

12 A Yes.

13 Q And you're essentially the case manager for a number of
14 banks?

15 A Yes.

16 Q And is that a regional thing, they're all in this area?

17 A Yeah, most of my banks are in Philly.

18 Q Okay. And they were mostly banks of the same size? Were
19 they all community banks, or did you have them from the big
20 ones down to the little ones?

21 A I had some big ones and some little ones.

22 Q Okay. So it would be fair to say that when TARP came
23 into existence you were already basically working full-time?

24 A Yes.

25 Q And that TARP created a whole another layer of work for

1 you to do?

2 A Yes.

3 Q And as the case manager, you became sort of the person
4 who had to sort of be the go between, between the bank and
5 this council, that hopefully we'll figure out who they were at
6 some point.

7 A Yes.

8 Q Right? And as such you -- for the banks that you were
9 the regulatory agency, you would be the individual who would
10 first get the ball started to begin the case decision memo?

11 A Well I had a big case at the time, and I had some people
12 come in, and one of those people started the ball with this
13 Nova application.

14 Q Okay. But in general, the case decision memo for the
15 banks you were responsible --

16 A Yes.

17 Q -- for, you were the person to do them?

18 A Yep.

19 Q And what you're telling us is you had some help on Nova,
20 because you were busy with some other banks?

21 A Yes.

22 Q And Nova wasn't the only bank you were dealing with who
23 was applying for TARP funds, correct?

24 A No.

25 Q And you say you dealt with some bigger banks?

1 A A few.

2 Q Did you deal with like the real big guys, like Wells
3 Fargo?

4 A No.

5 Q Okay. Because they didn't have to file one of these at
6 all, right?

7 A I don't think so.

8 Q They just got their money.

9 A I guess. I don't know.

10 Q Anyway, the way the ball starts rolling is by you doing
11 -- not you personally, but like the FDIC person who happens to
12 be in your position preparing this case decision memo which
13 goes down the road to the CPP for consideration, correct?

14 A Yes.

15 Q And if the FDIC doesn't take the position that the bank
16 should be eligible for CPP funds, I guess we'll call them, in
17 the first instance, then the case decision memo never goes to
18 the CPP, correct?

19 A I don't think so, no.

20 Q Okay. So the first decision, really a long, many trail
21 of decisions that we're going to have to cover here, is a
22 decision by the FDIC that, hey, maybe these people deserve
23 TARP?

24 A Yes.

25 Q Now correct me if I'm wrong, but the Government was

1 actually kind of trying to find folks a loan in TARP, right?

2 A Yes. In the beginning.

3 Q Right. And, in fact, at your agency, you were being told
4 hey, see if your banks want or need this, right?

5 A Yes.

6 Q Okay. And also there was no precedent for this whole
7 thing, right?

8 A No.

9 Q This was never done before? So it would be fair to say
10 it was kind of getting made up on the fly?

11 MS. BARRY: Objection.

12 THE COURT: Sustained.

13 BY MR. EGAN:

14 Q Well there was no protocol in place when it started,
15 correct?

16 A No.

17 Q And so some protocol had to be made up, basically on the
18 fly?

19 MS. BARRY: Objection.

20 THE COURT: Counsel, why don't you use a
21 different --

22 MR. EGAN: Sure.

23 BY MR. EGAN:

24 Q Basically the program was created without any precedent,
25 we already covered that.

1 A Yes.

2 Q So they had to come up with a way to do this?

3 A Yes.

4 Q Now, obviously, you didn't -- that wasn't your job,
5 right?

6 A No.

7 Q People way up in there in Washington did that, right?

8 A Yes.

9 Q And as I understand it, and correct me if I'm wrong, once
10 the FDIC came to the conclusion that they should send it down
11 the road to the CPP, and they would then create this case
12 decision memo, right?

13 A Yes.

14 Q And that case decision memo would say on it approved for
15 funds, right?

16 A Well it would be a recommendation for approval.

17 Q Good point. Let's --

18 MR. EGAN: Could we have 155, it's already been --
19 Government's Exhibit 155 is already in evidence.

20 Now I'm going to start at the end and work my way
21 back -- or actually circle around to the front, but you have
22 before you Government's Exhibit 155. You haven't testified
23 about this, but this is a case decision memo, correct?

24 A Yes.

25 Q And it's about Nova Bank, right?

1 A Yes.

2 Q And up in the right-hand corner it says, "December 18th
3 '09 IC meeting number two agenda item," do you see that?

4 A Yes.

5 Q And now the IC, that's the investment committee, right?

6 A I don't know.

7 Q You don't know what the investment committee is?

8 A No.

9 Q Okay. Do you know what the TARP Council is?

10 A Yes.

11 Q Okay. Now when you would -- well let me go back to the
12 question I asked when I brought up the exhibit. If we could
13 go to page -- strike that.

14 When you would make your recommendation for it to go
15 to the next level, right?

16 A Yes.

17 Q It would then go to the Treasury, correct?

18 A No, it would go to our Washington Office.

19 Q And then your Washington office would also review it?

20 A Yes. They would review it and present it to the TARP
21 Council.

22 Q And they're the ones who would take it to the council?

23 A Yes.

24 Q And the council would then have a vote on it, correct?

25 A Yes.

1 Q But that actually wouldn't mean it was approved, correct?

2 A No, there was a -- I think there was one final step after
3 that.

4 Q And that was, it doesn't refresh your recollection, this
5 investment committee?

6 A No.

7 Q If you could look at this document on page -- fourth
8 page. The very bottom. It says:

9 "To investment committee December 18th, '09.

10 Investment committee decision 3/0 denial. Contingent on 4/0
11 denial from council, and FDIC's change in viability."

12 Do you see that?

13 A Yes.

14 Q That's about the fact that on December 18th, '09 the
15 investment committee decided not to approve this application,
16 correct?

17 A It looks that way.

18 Q And so does that in any way refresh your recollection
19 that they're the folks who actually made the decision?

20 A No.

21 Q You don't really know who made the decision, do you?

22 A No.

23 Q Join the crowd.

24 MS. BARRY: Objection.

25 THE COURT: Sustained.

1 BY MR. EGAN:

2 Q Okay. It says here, "Contingent on the 4/0 denial from
3 council and FDIC's change in viability." Now this came up --
4 was brought to your attention because when FDIC's change in
5 viability would be something that would be addressed to you,
6 right?

7 A No.

8 Q So you really don't remember any discussion in relation
9 to this December 18th decision to deny the funds?

10 A No.

11 Q Now towards the end of your examination, which we just
12 heard a few minutes ago, you were asked a lot of questions
13 about communications that were between you and Mr. Hartline --

14 A Yes.

15 Q -- in December of 2009, correct?

16 A Yes.

17 Q And it would be fair to say that while you were fielding
18 those communications from Mr. Hartline, you were aware that
19 this application was going nowhere, correct?

20 A Not the whole time. Just towards the end.

21 Q Okay. And certainly the last couple of days?

22 A Yes.

23 Q And, in fact, the communications that he sent to you on
24 December 18th and after that, they came after you had already
25 been told by people in Washington that this was going to be a

1 denial, right?

2 A I don't remember.

3 Q Okay. Well we can address that, but that's kind of a
4 tough position to be in, isn't it?

5 A Well --

6 Q Well, I mean, there's people in D.C. are saying, tell
7 these folks they're not getting their funding, and you got to
8 be the one who tells them, right?

9 A Oh, yeah.

10 Q It wasn't any fun.

11 A No.

12 MR. EGAN: If we can have Defense Exhibit 81?

13 BY MR. EGAN:

14 Q Do you recognize that document?

15 A Yes, it's email traffic.

16 Q And it's between you and Bill Baxter?

17 A Yes.

18 Q And Kevin Glugert, I hope I'm not mispronouncing that.
19 And it's related to Nova Bank, correct?

20 A Yes.

21 Q And like all email trials, it starts at the bottom. So
22 if we could go to the second page. And on the second page,
23 there is a December 17th email from Bill Baxter to you, Amy
24 and Kevin --

25 A Right.

1 Q You recognize this document, right?

2 A I haven't seen it recently, but probably.

3 Q Well it's from the same time as all the ones you just
4 testified --

5 A It's got my name on it.

6 Q -- right. It's yours.

7 MR. EGAN: I move for the admission of D-81 --
8 strike that. I just want to ask a question about it. In this
9 email Mr. Baxter says:

10 "Given the four components for AQ and earnings, I
11 don't see this getting approved."

12 Correct?

13 A Yes.

14 Q (Reading)

15 "We will take it back to council if the region wants
16 to pursue this, but since the bank hasn't been -- never been
17 profitable, the TRUPs are deferred, that's the payment of --

18 A Interest.

19 Q -- interest, right.

20 "And the FRB opposes, this has little chance."

21 Correct?

22 A Correct.

23 Q (Reading)

24 "And, frankly, I don't support this either. given
25 the fact pattern."

1 Correct?

2 A Correct.

3 Q So basically this is telling you on December 17th at 7:11
4 a.m., that this is not happening, correct?

5 A Well the bank could have withdrawn the application and we
6 talked to them about it, but they wanted to pursue it.

7 Q And --

8 A So we sent the memo forward.

9 Q Right. And so you recall those conversations where you
10 said to the bank, why don't you withdraw the application?

11 A Yes.

12 Q Because you're not going to be granted anyway?

13 A I think my supervisor, Amy, had spoken to Mr. Hartline
14 about that.

15 Q And we saw some emails on your direct examination about
16 that, and there was -- Mr. Hartline says they have people's
17 funds who are contingent on getting the TARP, and he wants to
18 send it back in case they're denied, remember that?

19 A I remember some -- some email like that.

20 Q Yeah. And you said, don't send them back yet, maybe --
21 you know, wait and see?

22 A Well we had to get the official denial from Washington.

23 Q Right, understood. But you understand the reason they
24 didn't want to withdraw it is, because they had represented to
25 folks that they were going to get it?

1 MS. BARRY: Objection.

2 THE COURT: Sustained.

3 BY MR. EGAN:

4 Q So going back to the decision on December 18th by the
5 council --

6 A Right.

7 Q -- you weren't told the council made the decision on
8 December 18th?

9 A I didn't -- no. I don't remember when I was officially
10 told. I think it was the twentieth, it was like Tuesday
11 after.

12 MR. EGAN: Can we go to 160, Government's 160, it's
13 already admitted. And if we can blow that up? Thank you.

14 BY MR. EGAN:

15 Q And the one below is an email from you to Mr. Hartline,
16 correct?

17 A Yep. Yes.

18 Q And it says:

19 "I finally got an email from my contact in
20 Washington. He indicated he will know by Tuesday afternoon.
21 I'm sorry, I was told they would tell us Friday."

22 Correct?

23 A Right.

24 Q And what you are doing here is you're telling him you
25 don't have final official word?

1 A Right.

2 Q But you already knew that your boss was saying no,
3 correct, Mr. Baxter? Not your boss but the guy in FDIC --

4 A Right.

5 Q -- who was in charge?

6 A Right. It was a weak case.

7 Q It was a weak case. Well it was a weak case from day
8 one, wasn't it?

9 A The bank deteriorated along the way.

10 Q And, indeed, that mostly had to do with the securities
11 that the bank had on its balance sheet, correct?

12 A Well then asset quality deteriorated, yes, because those
13 securities were included in the asset quality rating.

14 Q Right. So when they applied in October of 2008, they
15 were doing okay, even though they had just taken over this
16 other bank and raised \$18 million. You knew all about that
17 right?

18 A Yes.

19 Q And they were well capitalized at that point --

20 A Yes.

21 Q -- when they applied. And what caused them to no longer
22 be well capitalized was this downgrading of the securities
23 that really they owned, but had nothing really to do with
24 them, right?

25 A Yes. That as the first part.

1 Q Okay. And once those securities were downgraded, Nova
2 became adequately capitalized, correct?

3 A Yes.

4 Q And it never became well capitalized again, correct?

5 A I'm not sure.

6 Q Well we'll walk through that in more detail. You
7 testified on direct examination that you became involved in
8 this matter late in '09, do you remember that?

9 A Yes.

10 Q Way back many hours ago? And you would agree with me,
11 would you not, that we saw quite a few emails that were
12 actually from the spring of '09?

13 A Yes.

14 Q So let's face it, I mean, this is how long ago, six
15 years, right?

16 A Yes.

17 Q So obviously it's hard to remember all this stuff?

18 A Yes.

19 Q So for the most part, your memory is being refreshed by
20 all of these documents, correct?

21 A Yes.

22 Q And reading the emails is reminding you what happened and
23 you're sort of filling in the pieces along the way?

24 A Yes.

25 Q So it would be fair to say, now that you've been here all

1 day testifying about this, that in reality you became involved
2 earlier in the year, not in late 2009.

3 A Well I said approximately in the second half of the year.

4 Q Right. Well the first email that you were shown by the
5 Government, which is Government's 10.

6 MR. EGAN: If we could have that?

7 BY MR. EGAN:

8 Q That's actually February, right?

9 A Yes.

10 Q So we're really talking pretty early in the year. Right?

11 A Yes.

12 Q Okay. And this -- at this point, there's an application
13 that's been sent down to Treasury, right?

14 A Yes.

15 Q But no ones taken any action on it?

16 A No.

17 Q Other than FDIC having approved it to go to Treasury in
18 the first place?

19 A Yes.

20 Q And that FDIC approval to go to Treasury was not based on
21 any capital raise in 2009? That wasn't even discussed at that
22 point, correct?

23 A Well they had a large investor.

24 Q Well that came in May, but I'm talking in February. In
25 February of 2009, when the initial recommendation was sent

1 down to Washington to prove -- or to recommend Nova for TARP
2 funds --

3 A Yes.

4 Q -- there had been no talk of a new capital raise or new
5 investor, correct?

6 A I don't remember when that started.

7 Q Well we'll get to that. But at this point in time, if
8 you look at Government Exhibit 10, the questions that are
9 being asked here relate to capital levels throughout the
10 organization, correct, the first bullet point?

11 A Yes.

12 Q The lead bank asset quality earnings and liquidity
13 ratings, correct?

14 A Yes.

15 Q Second bullet point. And the classified asset ratios,
16 third point.

17 A Right.

18 Q And the asset quality, that's one of the CAMELS factors,
19 isn't it?

20 A Yes, it is.

21 Q And earnings is a CAMELS, factor?

22 A Yes.

23 Q And liquidity is a CAMELS factor?

24 A Yes.

25 Q As is capital, correct?

1 A Yes.

2 Q So basically all of CAMELS, except for management is
3 covered by these concerns, correct?

4 A Except for sensitivity.

5 Q Sensitivity.

6 A Yes.

7 Q But basically the vast majority of them are covered?

8 A Yes.

9 Q And so Treasury was not just concerned about raising
10 capital, they were concerned about all these issues, right?

11 A Yes.

12 Q And when you went to get answers for this, you got those
13 answers you said you believe from Brian Hartline?

14 A Brian or Jeff.

15 Q Right. And isn't it true that at the start of the
16 process when you're exchanging numbers and getting like
17 financial data about the bank, that most of it came from Jeff?

18 A Yeah, I'm sure early in the process it did.

19 Q And that's because he was the CFO, right?

20 A Yes.

21 Q So he would be the one who did the math in determining
22 some of these things and actually provided you with the data?

23 A Yes.

24 Q And I believe at one point you said you had asked Jeff
25 questions on five or six occasions, and he always provided you

1 the answers you requested, correct?

2 A I don't remember saying that. I know he provided some of
3 the information.

4 Q And whenever you reached out to him and asked for
5 information, he gave it to you?

6 A Yes.

7 Q He didn't withhold anything from you?

8 A No.

9 Q Now if we go to Government 11, this is where you get the
10 answers to these questions, correct?

11 A Yes.

12 MR. EGAN: And if we could blow up the --

13 BY MR. EGAN:

14 Q Right. And so you did -- you basically cut and pasted
15 them in, right?

16 A Yes.

17 Q To the questions. Now the Government focused on the
18 first one, which it questioned capital levels, right?

19 A Right.

20 Q And with regard to that you say:

21 "CEO Brian Hartline indicted he would go out -- back
22 out for more capital later in the year to bolster capital."

23 Right?

24 A Yes.

25 Q So there's nothing in here about a \$15 million investor

1 or anything of that nature, correct?

2 A No.

3 Q And you go on to say:

4 "Mr. Hartline has a good solid history of raising
5 capital when it is needed."

6 And that was accurate, right?

7 A Yes.

8 Q They had just raised \$18 million the year before?

9 A Yes.

10 Q And then you have to answer the questions about asset
11 quality, correct?

12 A Yes.

13 Q And you also had to answer questions about liquidity?

14 A Yes.

15 Q And earnings. And all of this information that you used
16 to answer this, this is information that would also be
17 included in the call reports for the most part?

18 A Some of it.

19 Q It would be included also in FDIC examination reports?

20 A Yes. Some of it.

21 Q Or in PADOB examination reports?

22 A Yes.

23 Q And during this period of time, Nova was being examined
24 both by the PADOB and the FDIC, correct?

25 A I don't know when the examination was.

1 Q Okay. Well can get to that later, because the
2 examination clearly impacted the decision that was made by
3 whoever made it, right?

4 MS. BARRY: Objection.

5 THE COURT: Sustained.

6 BY MR. EGAN:

7 Q Well isn't it true that at the end of the day the
8 downgrading that was done by the PADOB is the main basis for
9 the -- that decision to deny the TARP funds?

10 A I'm not sure, I didn't make that decision.

11 Q Okay. Well did you -- you read what you sent to Mr.
12 Hartline, correct?

13 A Yes.

14 Q And what you sent was what was described to you by the
15 folks in D.C., correct?

16 A Yes.

17 Q Okay. But it would not be unusual for the Pennsylvania
18 Department of Banking to do an examination during the year
19 when this was going on, correct?

20 A No, it was routine.

21 Q Yeah, they were done all the time. And when the
22 examination takes place, the examiners go into the bank,
23 right?

24 A Yes.

25 Q And there's a couple of them at least? Sometimes a

1 bunch?

2 A Yes.

3 Q And they sit there for however long it takes, right?

4 A Right.

5 Q They ask for all the records, correct?

6 A Yes.

7 Q And among the things they ask for is loan records?

8 A Yes. We sample loans.

9 Q Sample loans. But the bank doesn't pick them, do they?

10 A No, we do.

11 Q Right. Because you're going to sample them to make sure
12 you get a representative sample?

13 A Right.

14 Q Okay. And you also look at all these other factors,
15 assets, liquidity, the whole thing, right?

16 A Yes.

17 Q And the regulators clearly rely on those examination
18 reports to determine the health of the bank, correct?

19 A Yes.

20 Q And certainly that would be a factor in whatever decision
21 was made by the CPP with regard to providing TARP funds to
22 Nova?

23 A Yes.

24 Q Okay. Now in April of 2009 is when the issue comes up
25 about the securities, correct?

1 A Yes.

2 Q And the issue is raised to you in the first instance as a
3 concern that the CPP has about whether the securities are
4 properly valued?

5 A Whether they were properly risk weighted.

6 Q Okay. And that risk weighting is essentially what caused
7 the bank to become adequately capitalized?

8 A Yes.

9 Q And in order for that analysis to be done, you had to
10 work with Mr. Hanuscin, correct?

11 A Yes.

12 Q To do the math, figure it out?

13 A Yes.

14 Q And Mr. Hanuscin didn't fight you with regard to what
15 needed to be done, did he?

16 A No.

17 Q They followed the FDIC's instructions?

18 A I don't know who instructed them, but I don't think it
19 was us.

20 Q Okay. Well they certainly --

21 A One of the regulators.

22 Q One of the regulators instructed them. And they
23 certainly, to your knowledge, followed all their instructions
24 right?

25 MS. BARRY: Objection.

1 THE COURT: Sustained.

2 BY MR. EGAN:

3 Q You don't have to answer that. I want to direct your
4 attention to Government Exhibit 17. And you were shown this
5 on your direct examination. Now this is a May 1st, 2009 email
6 from Jeffrey Hanuscin to you?

7 A Yes.

8 Q And it's a response to information requested for the TARP
9 application, correct?

10 A Yes.

11 Q And it is basically a summary of his answers to a number
12 of questions that you posed?

13 A Yes.

14 Q And one of them has to do with this OTTI analysis,
15 correct?

16 A Yes.

17 Q And these were all questions that were meaningful and
18 important for you to get so you could pass the information to
19 the CPP?

20 A Yes.

21 Q But you don't know which of these they relied on in
22 making their decision, correct?

23 A No.

24 Q If we could go to Government 21? This is an email from
25 you to Mr. Hunter, correct?

1 A No, from Mr. Hunter -- oh, yes, at the bottom.

2 Q Yes, at the bottom.

3 A Yes.

4 Q And basically you're asking Mr. Hunter if he needs
5 anymore information from you?

6 A Yes.

7 Q And you just mentioned:

8 "By the way, president Hartline left me a message
9 that they have an individual who wants to invest 15 million
10 into the bank."

11 A Yes.

12 Q (Reading)

13 "Unfortunately, it is not in escrow yet." Correct?

14 A Correct.

15 Q (Reading)

16 "But I just thought I'd pass that on." Correct?

17 A Yes.

18 Q So he'd not asked you about that at that point, correct?
19 You're volunteering that information?

20 A Well it's part of the capital component. Any information
21 like that would be important.

22 Q Well I'm not suggesting you shouldn't have, but I'm just
23 saying this is you volunteering it to him, it's not a question
24 he asked you?

25 A Okay. No.

1 Q Right? Okay. And then he goes back and says:

2 "I'm not going to take this case before the council
3 this week."

4 Correct?

5 A Yes.

6 Q Now did you know at this point that the council had
7 already met once and basically decided that they weren't sure
8 if they were going to approve this thing or not?

9 A I'm not sure.

10 Q Okay. Did you -- when did you -- how did you get
11 information about what the council did and didn't do?

12 A Through Chuck Hunter.

13 Q Okay. And when you talked to Chuck Hunter, you didn't
14 talk directly to the council ever?

15 A No.

16 Q Okay. And did you even know who was on the council?

17 A No.

18 Q And this investment council, you didn't even know they
19 existed?

20 A Nope. No.

21 Q Okay. Now that was kind of on purpose, right? There was
22 some secrecy around this whole thing?

23 A I don't know --

24 Q Did anybody in the council or at the CPP, or any of your
25 contacts in Washington say that this was information that

1 shouldn't be shared, what was being done in these meetings?

2 A No.

3 Q Okay. So you never heard that?

4 A I don't remember hearing it.

5 Q All right. But in any event, when you pass information
6 on to Chuck Hunter, you don't really know for sure what he did
7 with it, right?

8 A I assumed it was presented to the council.

9 Q You assumed, but you really don't know.

10 A Correct.

11 Q It would be Chuck Hunter's decision what he would or
12 wouldn't tell them?

13 A Yes.

14 Q So your job is basically, I'm going to give Chuck Hunter
15 all the information I get, and he's going to do with it what
16 he wants to do, correct?

17 A Well he was supposed to present it to the council.

18 Q Well and you're saying that as if there's some authority
19 to that effect. It was Chuck Hunter's decision what to do,
20 correct?

21 A I guess.

22 Q Okay. But anyway, you did pass this on to him, and then
23 he had some questions for you. He says:

24 "The big issues to be resolved are the sub
25 investment quality securities."

1 And that's this issue we were just talking about,
2 right?

3 A Yes.

4 Q And as of May that had not been resolved?

5 A No.

6 Q And indeed, that was never resolved, was it? They had to
7 be downgraded?

8 A They re-filed their March call report.

9 Q Right. They agreed with the regulators and lowered their
10 standing, for lack of a better way of putting it, right?

11 A I would call that resolved.

12 Q Okay. Well, yes, it was resolved, but it was resolved
13 unfavorably to the bank, really, when you get right down to
14 it, correct?

15 A Well, yes.

16 Q Okay. And they went along with that, right?

17 A So capital regulations.

18 Q I'm sorry?

19 A It's the banking capital regulations.

20 Q Right. And then the second is:

21 "The bank's effort to raise capital. Including as
22 much information as possible on the likely investors, the type
23 of instruments likely to be issued, et cetera."

24 Correct?

25 A Correct.

1 Q And you then were going to go down the road to the bank
2 and ask for more information on the investor?

3 A Yes.

4 Q And you did ask for that information, correct? And
5 that's when you received George Levin's biographical?

6 A Yes.

7 Q And George Levin's financial statement?

8 A Yes.

9 Q And other information about George Levin?

10 A Yes.

11 Q Now at the time Mr. Hunter writes this email to you, he
12 writes:

13 "I will phone you tomorrow."

14 And then in the second sentence there he says:

15 "If we can present strong evidence that the bank has
16 attracted that much in private capital."

17 So he wasn't sure whether that could be done or not,
18 correct?

19 A Correct.

20 MR. EGAN: Your Honor, is this a good time to break?

21 THE COURT: Sounds good. Members of the jury, we're
22 going to adjourn for the day. Again, do not discuss this
23 testimony that has been elicited thus far. Avoid any radio,
24 television, or any other media broadcast about the case. Be
25 mindful that there is no Court on Friday so, you're welcome.

1 We'll see you tomorrow morning at 9:15. Thank you.

2 (Jury Exits)

3 (Proceedings concluded at 4:13 p.m.)

4 * * * * *

5 C E R T I F I C A T I O N

6 I, Josette Jones, court approved transcriber, certify that the
7 foregoing is a correct transcript from the official digital
8 audio recording of the proceedings in the above-entitled
9 matter.

10 **Josette Jones**
Digitally signed by Josette Jones
DN: cn=Josette Jones, o, ou,
email=dianadoman@comcast.net, c=US
Date: 2016.04.11 15:53:55 -04'00'

11 -----

12 JOSETTE JONES

13 DATE

DIANA DOMAN TRANSCRIBING, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
FOR THE GOVERNMENT				
Lisa Koch		3 (Ega)	104 (Bar)	114 (Ega)
		67 (Dun)		116 (Dun)
Frank Preve	140 (Ign)			
<u>EXHIBITS:</u>			<u>I.D.</u>	<u>EVID.</u>
G-64 Letter from Nova Financial Holdings to Federal Reserve Bank				106
G-198 Plea Agreement			152	
G-14 Email from Bekkedam to Preve and Levin			162	
G-15 Email from Bekkedam to Preve and Levin			164	164
G-40 Email from Rovin to Preve and Hartline			183	183
G-40A Email from Hartline to Preve, Rovin, Bekkedam and Patterson			185	
G-40B Email from Preve to Hartline, Rovin, Bekkedam			187	
G-40C Email from Hartline to Preve, Rovin, Bekkedam and Patterson			188	188
G-42 Email from Patterson to Preve			190	
G-46 Email from Preve to Patterson			191	191
G-47 Email from Preve to McMahon & S. Levin			194	
G-64 (Previously admitted)				198
G-28 (Previously admitted)				
G-73 Email from Rovin to Preve			201	

Koch - Cross (Ega)

3

1 (The following was heard in open court at 9:38 a.m.)

2 THE CLERK: Court is now in session. The Honorable
3 C. Darnell Jones, II presiding.

4 THE COURT: Good morning. Good morning. You may be
5 seated.

6 ALL: Good morning.

7 THE COURT: Be seated.

8 MR. EGAN: May I proceed, Your Honor?

9 THE COURT: Yes, sir.

10 (Pause)

11 THE COURT: Madam, you're still under oath.
12 Counsel, you may proceed.

13 MR. EGAN: Thank you, Your Honor.

14 LISA KOCH, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

15 CROSS-EXAMINATION CONTINUED

16 BY MR. EGAN:

17 Q Good morning, Ms. Koch.

18 A Good morning.

19 Q Yesterday afternoon when we were -- when I was
20 questioning you, --

21 A Um-hmm.

22 Q -- we talked about the fact that you didn't have a great
23 memory of these facts outside of the emails, is that right?

24 A Well, it was about, what -- it was a while ago.

25 Q Sure. I mean, it was 2009 mostly, right?

Koch - Cross (Ega)

4

1 A Right.

2 Q Some 2008, but mostly 2009.

3 A Um-hmm.

4 Q Certainly I don't --

5 THE COURT: Again, Ms. --

6 A Yes. I'm sorry.

7 Q I have no idea what I was doing in 2009, so I totally
8 understand that. But I think what we'll do is, we'll try to
9 walk through the emails so that we can help refresh your
10 recollection.

11 A Sure.

12 Q And that way we can be sure we get your best recollection
13 of what happened. As I recall, you said that you received
14 some information from Mr. Hartline, --

15 A Yes.

16 Q -- and some information from Mr. Hanuscin?

17 A Yes.

18 Q And that it was pretty much a mix of both. Would that be
19 a good way of putting it?

20 A Yes.

21 Q So it would be fair to say, would it not, that the emails
22 that came from Mr. Hanuscin were -- were the things that Mr.
23 Hanuscin told you, right? And the emails that came from Mr.
24 Hartline were mostly the things that Mr. Hartline told you?

25 A Yes. But I believe both cc'd the other when they sent me

Koch - Cross (Ega)

5

1 things.

2 Q Of course. But the information was coming directly from
3 that person?

4 A Right.

5 Q So I want to direct you to D-18, which will appear on
6 your screen in a sec. And this is in March of 2009. And it's
7 an email from you to Mr. Hanuscin. Do you see that? At least
8 the --

9 A Yes.

10 Q -- top part. And it's actually -- excuse me -- it's
11 April 17th, 2009. And you're asking him some questions,
12 right?

13 A Yes.

14 Q And you're asking him to get you a lot of information,
15 correct?

16 A Yes.

17 Q And the information is information that you basically
18 need for the TARP application?

19 A Yes.

20 Q Now, these are questions obviously that somebody
21 forwarded to you, right?

22 A Yes.

23 Q Okay. And if you go to the second paragraph, you say
24 their areas of concern are leverage at the holding company,
25 right?

Koch - Cross (Ega)

6

1 A Yes.

2 Q Earnings and asset quality, correct?

3 A Yes.

4 Q Now, earnings is one of those acronyms in the Camels,
5 correct?

6 A Yes.

7 Q And asset quality, that's one of the acronyms in the
8 Camels?

9 A Yes.

10 Q And neither of those are related whatsoever to capital,
11 correct?

12 A Earnings is.

13 Q Well, earnings obviously makes capital, --

14 A Right.

15 Q -- but there's a whole -- there's a -- put it this way,
16 on the Camels system, there's a basket that's called capital?

17 A Yes.

18 Q And then there's a basket that's called earnings?

19 A Right.

20 Q So this is a separate basket?

21 A Right.

22 Q They obviously affect one another; --

23 A Yes, they do.

24 Q -- they all interplay in --

25 THE COURT: Counsel, don't -- no comment, just --

Koch - Cross (Ega)

7

1 MR. EGAN: I'm sorry, Your Honor. My bad.

2

3 THE COURT: -- state the question, please.

4 BY MR. EGAN:

5 Q They -- they all interplay, right?

6 A Yes.

7 Q Okay. But these two particular ones they're interested
8 in are not specifically capital?

9 A No.

10 MR. EGAN: And if we can now go to G-17. And I
11 believe this is already admitted.

12 MR. MORGAN: Yes.

13 MR. EGAN: You may publish it to the jury.

14 BY MR. EGAN:

15 Q This is an -- excuse me -- an email from Mr. Hanuscin to
16 you, correct?

17 A Yes.

18 Q And it contains a whole lot of information, right?

19 A Yes.

20 Q And these are essentially the answers to the questions
21 that you were asking in the email we just looked at?

22 A Yes.

23 Q Okay. And so obviously he answers to the best of his
24 ability your questions about asset quality, right?

25 A Yes.

Koch - Cross (Ega)

8

1 Q And he also answers your questions about the OTTI
2 analysis?

3 A Yes.

4 Q And that's this issue having to do with these securities
5 that the bank owned that ended up getting downgraded, right?

6 A Somewhat, yes.

7 Q It's all complicated, but that's really it, right?

8 A Yeah. Yes.

9 Q Okay. And then if you turn to page 2, there's a question
10 about what is the cash position of the holding company. Do
11 you see that?

12 A Yes.

13 Q And he answers you with how much money is there and says
14 currently 2.5 million has been raised of potential capital.
15 Now, this is before anything having to do with Mr. Levin's
16 investment, correct?

17 A Yes.

18 Q So that's 2.5 million that would have already been raised
19 from other people?

20 A Yes.

21 Q And then he goes on to say these funds were partly raised
22 in connection with the DVFG acquisition?

23 A Yes.

24 Q Do you remember the DVFG acquisition?

25 A It was Delaware Valley Financial Group, I believe.

Koch - Cross (Ega)

9

1 Q Yeah. It was an insurance company, right?

2 A I'm not sure.

3 Q Okay. But you remember they were talking about acquiring
4 another company --

5 A Yes.

6 Q -- and adding it to the bank's portfolio?

7 A Yes.

8 Q And that was this thing called DVFG?

9 A Yes.

10 Q Okay. And so basically what he's saying here is some of
11 that 2.5 is tied to that, right?

12 A Yes.

13 Q And then the last question is, what debt service
14 requirements are at the holding company. And this relates to
15 the issue of whether the holding company can pay its
16 dividends, right?

17 A Yes.

18 Q And that became a very big issue, did it not?

19 A Yes, it did.

20 Q And, in fact, the holding company's inability to pay its
21 dividends turned out to be a big factor in the TARP -- the
22 whole TARP analysis?

23 A Yes.

24 Q And then obviously, we won't go through them, but there's
25 a whole lot of financial data attached to this exhibit.

Koch - Cross (Ega)

10

1 You're not seeing --

2 A Yes, there is.

3 Q -- because you have --

4 A There was.

5 Q -- a copy like that. All right. So if we can now turn
6 to D-29. And once you have it, I'll ask you a question or
7 two.

8 This is a -- an email back and forth between you and
9 a gentleman named Gregory M. Quint, correct?

10 A Yes. Yes.

11 Q And Gregory Quint, I assume, is another FDIC employee?

12 A Yes.

13 Q And Gregory Quint is the individual who ended up doing
14 the analysis of the securities we've been talking about,
15 right?

16 A I believe so, yes.

17 Q And that's actually kind of a complicated area, correct?

18 A It is.

19 Q Okay. So he was maybe a specialist in that kind of
20 stuff?

21 A Capital market specialist.

22 Q Okay. So if we go down to the bottom, Mr. Quint is
23 actually writing to a Chuck Hunter?

24 A Yes.

25 Q And Chuck Hunter is one of these guys in Washington,

Koch - Cross (Ega)

11

1 right?

2 A Yes.

3 Q And he's higher up at the FDIC, I guess?

4 A I don't know.

5 Q But he was one of the people that you would -- you had
6 some back and forth with regarding --

7 A Yes.

8 Q -- all of these issues? And Chuck is -- has asked Mr.
9 Quint some questions about the -- the securities, correct?

10 A Yes.

11 Q And in response to that, you write to Mr. Quint just
12 above there --

13 MR. EGAN: If we can go there to the next email
14 up.

15 Q You write to Mr. Quint and say basically I'll be back in
16 the office Friday, can we talk then, right?

17 A Yes.

18 Q Because you were going to give him whatever information
19 you had about this so he could make a good analysis, correct?

20 A Yes.

21 Q Because you're the case manager?

22 A Yes.

23 Q So it's kind of your bank, basically, for lack of a
24 better way of putting it.

25 MS. BARRY: Objection.

Koch - Cross (Ega)

12

1 THE COURT: Sustained.

2 MR. EGAN: Withdrawn.

3 BY MR. EGAN:

4 Q So -- and then if we can go up to the next email, he
5 says: "I'm out tomorrow afternoon and Friday, is Tuesday too
6 late?" And then if we go up to the one before that -- or
7 above that, I'm sorry, you write back and you say: "I would
8 try and call Chuck tomorrow to determine exactly what he
9 wants."

10 So from the prior discussion, you weren't really 100
11 percent sure what it was Chuck was concerned about, I guess?

12 A Yes.

13 Q Okay. And then you write: "My understanding of what he
14 wanted does not seem to be right per his email." Correct?

15 A Yes.

16 Q So basically you're still -- you're kind of trying to
17 figure this out?

18 A Yeah, I didn't understand what he needed.

19 Q Okay. And then you say: "I'm sorry he seems somewhat
20 condescending to you in his email; that's my take." So that's
21 -- you're just basically being polite, right?

22 A Yes.

23 Q Okay. And then if we can go up to the top one. Mr.
24 Quint writes back to you and he says: "No problem, I didn't
25 want to open up a can of worms, but I felt compelled to at

Koch - Cross (Ega)

13

1 least bring up the possibility of a risk waiting issue for
2 some of these securities." So this is Mr. Quint saying, hey,
3 there might be an issue here?

4 A Yep. Yes.

5 Q And this is basically the first anybody knows about this
6 issue, isn't -- isn't -- or really focused on it was in May?

7 A I believe so, yes.

8 Q And this is after the FDIC sent its original approval --
9 or recommendation of approval down to the TARP council back in
10 January, right?

11 A I believe that -- yeah, I'm not sure when it was sent.

12 Q Well, we already had an April meeting where the council
13 said they wanted more information, so that would have to mean
14 necessarily that the FDIC had sent it down before then, right?

15 A Yes.

16 Q Okay. So if you go to the last sentence of that email,
17 it says: "The FEIC guidance put out within the last month or
18 so walks through some examples." Do you see that?

19 A Yes.

20 Q Now, FFIEC guidance, do you know what that is?

21 A It's the Federal Financial Institution's -- I'm not sure
22 what EC stands for.

23 Q But what it is, is it's some kind of guidance coming from
24 someone who's tied to the regulatory agencies about how to
25 handle these kind of issues, right?

Koch - Cross (Ega)

14

1 A Yes.

2 Q And it's not unusual for that guidance to come out
3 continuously -- or not -- but frequently?

4 A It comes out all the time.

5 Q It comes out all the time. Thank you. Much better put.
6 And it comes out all the time because issues change, right?

7 A Yes.

8 Q And conditions change?

9 A Yes.

10 Q And in 2008 and 2009, conditions were changing, weren't
11 they?

12 A They had changed a lot.

13 Q Indeed. And so what had been okay and maybe made sense
14 to a bank in 2008, in 2009 maybe not so much?

15 MS. BARRY: Objection.

16 THE COURT: Sustained.

17 BY MR. EGAN:

18 Q If we could go to D-24 then. And that last email was on
19 Thursday, May 21st at 7:19. This email is on Thursday, May
20 21st at 11:42. And if you go to the bottom, Mr. Quint writes
21 you and he says: "Hello, Lisa. Chuck instructed me to call
22 the bank." Correct?

23 A Yes.

24 MS. BARRY: Objection.

25 MR. EGAN: Basis?

Koch - Cross (Ega)

15

1 MS. BARRY: Hearsay.

2 THE COURT: Overruled at this point.

3 BY MR. EGAN:

4 Q And he says: "I was a bit reluctant to do so." And he
5 says I was a bit reluctant to do so because it's your bank,
6 basically, right?

7 A It was in my caseload.

8 Q Right. And that's not -- you wouldn't be calling up
9 somebody else's bank without talking to them first?

10 A I was the primary contact.

11 Q Right. But I mean you yourself wouldn't call up somebody
12 else's bank without letting them know first, I would imagine?

13 A No.

14 Q Yeah. But you were away, --

15 A Yes.

16 Q -- and Chuck wanted to know apparently right away. And
17 you respond and you write to him: "Thanks, Greg. I'm really
18 sorry I'm not around to do so. Jeff is very nice. He has put
19 up with all the TARP questions. I think there have been like
20 five rounds of questions for them."

21 So at this point in time, you're basically saying to
22 Mr. Quint --

23 A Yes.

24 Q -- that the bank's giving you whatever information you
25 ask and you've had a lot of questions?

Koch - Cross (Ega)

16

1 A Yes.

2 Q And you say: "Thanks again. Sorry I got you into this
3 mess. But you were just being polite, basically?"

4 A Yes.

5 Q And he writes back to you and he says: "No problem.
6 Just don't want to step over my bounds, particularly with a
7 TARP application. Wait until he reads the guidance; his head
8 is going to spin." And that says to you this guidance is
9 pretty complicated?

10 A It's complicated.

11 Q In fact, it would make most people's head spin.

12 MS. BARRY: Objection.

13 THE COURT: Sustained.

14 BY MR. EGAN:

15 Q Well, a lot of the guidance that comes out of these
16 regulatory agencies with regard to these types of issues is
17 pretty complicated, right?

18 A Yes. Some of them.

19 Q Now, turning to D-33, you write back to Mr. Quint on May
20 28th and you say: "The guidance you sent to Nova, when did
21 this come into play; is it new?" Correct?

22 A Yes.

23 Q And that's actually just you want to know because you've
24 got to deal with a lot of other banks, right? You want to
25 have that information?

Koch - Cross (Ega)

17

1 A Yes.

2 Q And he responds to you. And in the last sentence of his
3 response he says: "I think the FFIEC found it necessary to
4 issue guidance given the recent applicability of the issue and
5 some confusion out there." Do you see that?

6 A Yes.

7 Q And that's why they issue guidance, right?

8 A Yes.

9 Q They issue guidance because a lot of times on these
10 evolving issues or emerging issues, there's confusion in the
11 banking industry?

12 A Yes.

13 Q Now, if we could go to Government-22, please.

14 MR. MORGAN: Is this admitted?

15 MR. EGAN: It is admitted, so it may be published.

16 BY MR. EGAN:

17 Q And apparently -- do you remember testifying yesterday
18 that you got a voicemail from Brian Hartline saying that they
19 had a potential investor?

20 A Yes.

21 Q And he was going to put a lot of money into the bank?

22 A Yes.

23 Q Okay. So if you look at the bottom email on this page,
24 it's from you to Brian, and it's dated May 26th.

25 A Yes.

Koch - Cross (Ega)

18

1 Q And it says, hi, Mr. Hartline, I received your message
2 today. That is great news of a potential private investor.

3 So this would be contemporaneous with receiving that
4 voicemail, correct?

5 A I believe so.

6 Q Okay. And then the next paragraph says: "I spoke to
7 Chuck Hunter, the person in D.C. who is presenting your
8 application to the TARP committee. He indicated it would be
9 in your best interest to forward whatever information you
10 could pass along about the private investor." Correct?

11 A Yes.

12 Q So this is you telling Mr. Hartline that Mr. Hunter has
13 asked you to get a bunch of information?

14 A Yes.

15 Q Now, do you remember an email you were shown yesterday by
16 Ms. Barry that had like sort of a more detailed list of stuff
17 that Mr. Hunter wanted you to ask?

18 A I don't know which email. There's a lot of emails.

19 Q There's a lot of emails. That's true.

20 Q But you would agree the way you put it to Mr. Hartline
21 was, whatever information you can pass along, correct?

22 A Yes.

23 Q And in that same email, you also get back to this issue
24 we were just talking about, which is these investments. And
25 you say: "I do need to get some information regarding the

Koch - Cross (Ega)

19

1 subinvestment quality investments." Correct?

2 A Yes.

3 Q And you say you will contact Jeff about that later today,
4 right?

5 A Yes.

6 Q Now, Mr. Hartline responds about the investor at the top
7 of this email and he says a couple things. First he says:
8 "Please find attached the personal financial statements for
9 the potential investor." Right?

10 A Yes.

11 Q And if we could go to page 4 of this document. That is
12 the personal financial statement of George Levin, correct?

13 A Yes.

14 Q And it's signed, isn't it?

15 A Yes.

16 Q And it's signed by George Levin?

17 A Yes.

18 Q And by his wife, Gayla Sue.

19 A Yes.

20 Q Now -- so Mr. Hartline is just providing you with the
21 financial statement that was given to him apparently or
22 prepared by Mr. Levin, correct?

23 A Yes.

24 Q And I believe yesterday the Government showed the jury --

25 MR. EGAN: If we could again on page 5.

Koch - Cross (Ega)

20

1 Q -- that he's apparently worth \$364 million and a number
2 that ends in 39 cents, correct?

3 A Yes.

4 Q 39 cents is important there. Now -- and that's Mr.
5 Levin's financial statement, right?

6 A Yes.

7 Q Not the bank's financial statement?

8 A No.

9 Q Now, going back to the first page, he also says to you:
10 "I would prefer this information go no further until I get a
11 firm understanding how much he will invest." Correct?

12 A Yes.

13 Q So basically he's saying this is for you and whoever you
14 got to give it to in the Fed, but -- or in the FDIC, but, you
15 know, don't disseminate it to anybody else, right? I mean,
16 you didn't see that as saying you couldn't share it with
17 Chuck?

18 A No.

19 Q Yeah, of course. Now, it also says there, though, until
20 I get a firm understanding how much he will invest, correct?

21 A Yes.

22 Q So he's not sure even how much this guy is giving yet,
23 correct, on May 26th? Or investing, I should say; he's not
24 giving anything.

25 A Well, Mr. Levin had said he -- his original thought was

1 to invest 15 million.

2 Q Right. He's saying he might.

3 A Right.

4 Q But he also says right above that he may change his mind
5 and stay under 9.9 percent, correct?

6 A Yes.

7 Q And then if you go to the bottom of the paragraph that
8 starts with his original thought, he says: "If he doesn't
9 want to go through the application process and stay at 9.9
10 percent, the capital investment would be reduced." Correct?

11 A Yes.

12 Q So at this point, we're not sure if Mr. Levin is going to
13 go through this process. And we talked about it yesterday and
14 we'll talk about it a little more today, it's the changing
15 control thing, right?

16 A Yes.

17 Q Because that's kind of an elaborate process?

18 A It involves a lot of information.

19 Q Yeah, and it's Mr. Levin that has to provide that
20 information?

21 A Exactly.

22 Q Yeah. So Mr. Hartline's not sure of that, so he's
23 saying, hey, this guy said he's going to invest; hopefully it
24 will be the 15, but it might not. Right?

25 A Yes.

Koch - Cross (Ega)

22

1 Q Okay.

2 MR. EGAN: And now if we can go to Government 28,
3 which I know has been admitted.

4 Q And this is dated June 2nd. Now, we're going to get to
5 Government 30 next, and that indicates that the regional -- or
6 the CPP council made their recommendation on June 10th, right?
7 It's not on here, but --

8 A Oh, it's not on there.

9 Q But if I represent to you that the council
10 recommendations says it's on June 10th, you wouldn't dispute
11 that, right?

12 A I -- I don't know the exact date.

13 Q I'll show it to you in a minute.

14 A Okay.

15 Q All right. But June 2nd is the day you get this email
16 from Jeffrey Hanuscin, correct?

17 A Yes.

18 Q And in this email, he says a number of things to you.
19 Number one, he talks first about the -- this OTTI investment
20 problem that has come up, correct?

21 A Yes.

22 Q And he basically says as a result of this new guidance
23 analysis and what we've had to go through here, we're no
24 longer well capitalized, correct?

25 A Yes.

Koch - Cross (Ega)

23

1 Q And that's something basically everybody had kind of come
2 to the understanding of at that point, was Nova was no longer
3 going to be well capitalized?

4 A Yes.

5 Q And, by the way, amending a call report, there's nothing
6 wrong with that, right?

7 A No.

8 Q In fact, you guys -- the FDIC likes it if you amend a
9 call report to fix things after the fact --

10 A If -- if there's something wrong in the call report, you
11 should amend --

12 Q Right. When you find out, hey, we did this wrong, you
13 amend the call report?

14 A Yes.

15 Q So -- so that covers that issue. And then paragraph two,
16 he writes the following: "Management believes that the
17 adequate capital levels should be short-lived." Correct?

18 A Yes.

19 Q So he's not saying they definitely won't be short-lived,
20 he's saying they should be, correct?

21 A Yes.

22 Q And then he goes on to say: "An individual has expressed
23 interest to invest 15 million." Right?

24 A Yes.

25 Q But he then says: "The investment is dependent upon

Koch - Cross (Ega)

24

1 regulatory approval of his investment," --

2 A Yes.

3 Q -- that would be the change in control, right? --

4 A Yes.

5 Q -- "the Treasury Department approving Nova to sell
6 preferred stock through the TARP program," meaning the
7 Treasury Department giving TARP funds to Nova, right? --

8 A Yes.

9 Q -- "and the approval of the DFG transaction." Correct?

10 A DF -- DVFG.

11 Q I'm sorry, yes, DVFG.

12 A Yes.

13 Q And that's this insurance company we just talked about a
14 few minutes ago?

15 A Yes.

16 Q So basically what this says is, this guy's not giving us
17 his money unless all this stuff happens?

18 A Yes.

19 Q Okay. And then he goes on and tells you a little bit
20 more about the DVFG transaction, that it would be more capital
21 and then things would be better, right?

22 A Yes.

23 Q So then if you go to the two paragraphs below that which
24 starts, with the expected, right?

25 A Yes.

Koch - Cross (Ega)

25

1 Q That says: "With the expected new capital levels,"
2 meaning they're expecting that, "they don't know for sure it's
3 going to happen." Right?

4 A Yes.

5 Q Management feels -- in other words, they kind of -- their
6 hope, they feel. They feel.

7 A Yes.

8 Q "Feel pretty good that Nova will be in a better position
9 to handle the economic turmoil." Correct?

10 A Yes.

11 Q And then he encloses for you DVFG's financial statements.
12 Now, he did that, I assume, so you could see that -- or
13 whoever was going to do the actual, you know, close look, that
14 DVFG's got some assets, too; that it's worthwhile?

15 A Yes.

16 Q Because if DVFG's not worthwhile, then this whole thing
17 falls apart, right?

18 MS. BARRY: Objection.

19 A I don't know.

20 THE COURT: Just -- all right.

21 BY MR. EGAN:

22 Q Okay. If we go to the second page of this, this is a
23 letter that was attached to there that you were shown by the
24 Government, and this is the letter from Ballamor Capital,
25 correct?

Koch - Cross (Ega)

26

1 A Yes.

2 Q And if we go to the second paragraph, it says: "Our
3 investors have committed to us that they wish to participate
4 in the Nova investment." Correct?

5 A Yes.

6 Q And then on the second line it says: "Provided that
7 Nova's current application for TARP funding is approved."
8 Correct?

9 A Yes.

10 Q "And the pending DVFG transaction is also approved."
11 Correct?

12 A Yes.

13 Q So all that's contingent as well, correct?

14 A Yes.

15 Q Now if we could go to the Government 30, and this is what
16 I was just talking to you about, the CPP council review
17 decision sheet. And you're familiar with this, right?

18 A No, I had never seen that.

19 Q You never got this?

20 A No.

21 Q Well, you were told at the -- at some point you were told
22 -- well, let me just ask a few questions about that. You were
23 the FDIC's main contact for the information to go to the TARP
24 folks?

25 A Yes.

Koch - Cross (Ega)

27

1 Q And the CPP council, they're part of the TARP folks,
2 right?

3 A Yes.

4 Q You didn't know -- like they didn't send you their
5 results?

6 A I don't think so. I think Chuck just told me.

7 Q Okay. So -- well, let's -- let's talk about that a
8 little. So you only hear what Chuck tells you, right?

9 A Yes.

10 Q And Chuck only hears what you tell him, right?

11 A Yes.

12 Q And you don't know what Chuck tells the council, right?

13 A No.

14 Q So you don't know what, if anything, of what you passed
15 to Chuck actually got to this council?

16 A No.

17 Q All righty. Well, if you haven't seen this, then I won't
18 -- I won't spend our time going over it with you.

19 MR. EGAN: If we could go to G-31 then. And I don't
20 know if G-31's been admitted.

21 MR. MORGAN: It has.

22 MR. EGAN: It has? Thank you. Sorry. I should
23 have brought a chart up, Your Honor.

24 BY MR. EGAN:

25 Q So G-31 is Chuck -- well, actually it's Julie Howland

Koch - Cross (Ega)

28

1 writing to you.

2 A Yes.

3 Q Julie Howland is someone else at FDIC?

4 A She was my supervisor.

5 Q Okay. And she's writing to you and she tells you that
6 she spoke to Chuck Hunter, who presented the application to
7 the TARP committee today. Correct?

8 A No. I spoke to Chuck Hunter.

9 Q Oh, I'm sorry, I got it backwards. From you to her. I'm
10 sorry. Thank you. So you're writing to her and you're saying
11 -- you're saying you spoke to Chuck Hunter. So this is just
12 what you told me, Chuck Hunter called you and said that --

13 A Yes.

14 Q -- you've been approved. So you say: "I spoke to Chuck
15 Hunter. He presented Nova's application for TARP to the
16 committee today." Right?

17 A Yes.

18 Q "They voted to approve with a contingency that the bank
19 raise a minimum of 15 million in capital." Right?

20 A Yes.

21 Q Now, you don't know if in there they -- there's anything
22 about this DVFG pending transaction, right? Whether that was
23 in their consideration?

24 A No.

25 Q Basically what they're saying is, if they come up with 15

Koch - Cross (Ega)

29

1 million bucks, you know, maybe we'll give them this thing,
2 right?

3 A Right.

4 Q And, in fact, Chuck indicated it still has to go through
5 a review process at Treasury, meaning those guys don't even
6 really make the decision, correct?

7 A I don't know.

8 Q All right.

9 MS. BARRY: Objection.

10 Q Well, we talked yesterday --

11 THE COURT: Sustained.

12 Q -- about this investment committee.

13 MS. BARRY: Objection.

14 THE COURT: Counsel, the objection's sustained.

15 MR. EGAN: Sorry.

16 BY MR. EGAN:

17 Q We talked yesterday about this investment committee?

18 A Yes.

19 Q Okay. You don't know who's on the investment committee,
20 right?

21 A No.

22 Q They're the ultimate deciders, right?

23 A I don't know.

24 Q Okay. All righty. But anyways, he indicates it still
25 has to go through more process, so this is --

Koch - Cross (Ega)

30

1 MS. BARRY: Objection.

2 THE COURT: Counsel, may I see you, please?

3 (Sidebar begins)

4 THE COURT: What's the basis for your objection?

5 MS. BARRY: He's -- he was referring to the email.

6 It's not from Chuck Hunter, and that was the basis of my first
7 objection, that he's saying I don't think we moved on. He's
8 not talking about an email. The email that he's presenting
9 does not have anything from Chuck Hunter on there. So I was
10 just -- you know, if there's an email where Chuck says
11 something to her, I'm -- I'm fine with that. But --

12 MR. EGAN: Your Honor, it might be my fault for
13 confusing things, but --

14 MS. BARRY: Yeah, that's --

15 MR. EGAN: -- it's her -- if I could -- it is her
16 email where she's talking about a conversation with Chuck
17 Hunter. So I don't know why that's not permitted.

18 MS. BARRY: I think I maybe misheard. But my
19 initial objection was he was saying something about the email,
20 and I didn't see that in the email. So I -- I'm not clear on
21 where he's going when he's referring to the email or what he's
22 referring to, so I'm not sure that the witness would
23 understand what he's referring to. That was the basis of my
24 objection.

25 MR. EGAN: I'll clear it up, Your Honor. Thank you.

Koch - Cross (Ega)

31

1 (Sidebar ends)

2 BY MR. EGAN:

3 Q So let's go back to the first -- oh, it's here already.

4 Great. This email is from you to Julie, --

5 A Yes.

6 Q -- and basically you're telling your boss what's going
7 on, right?

8 A Yes.

9 Q And you're saying, hey, Julie, here's what's going on.
10 And what you say is: "I spoke to Chuck Hunter."

11 A Yes.

12 Q Okay. So what you say after this is all what Chuck
13 Hunter told you, right?

14 A Yes.

15 Q Okay. And what Chuck told you is, it still has to go
16 through a review process, right?

17 A Yes.

18 Q And that they approved it on a contingency that they
19 raise \$15 million in capital?

20 A Yes.

21 Q But you don't have any recollection of him telling you
22 about whether the DVFG had to be approved or any of that
23 stuff?

24 A No.

25 Q Okay. And -- now if we can go to the next one up. Julie

Koch - Cross (Ega)

32

1 writes back and says: "Good news. Not sure what Nova will
2 say." Right?

3 A Right.

4 Q So you respond to that, and in your response you say:
5 "They will be fine with it. As I was gathering additional
6 information for Chuck, I spoke to president Hartline about the
7 possibility of Chuck presenting it as a contingency."

8 So, in other words, when you spoke to Hartline about
9 it, that hadn't already been done, right? In other words,
10 your conversation was before you heard from Chuck?

11 A (No response)

12 Q Well, let's go over it more carefully.

13 A Yeah.

14 Q You say as I was gathering additional information for
15 Chuck. So that would have been before the meeting, I would
16 assume?

17 A Yes.

18 Q Okay. I spoke to president Hartline?

19 A Yes.

20 Q So that means before the meeting?

21 A Apparently, yes.

22 Q Okay. And you told him that they might present it --
23 they might, the possibility he might present it as a
24 contingency?

25 A Yes.

Koch - Cross (Ega)

33

1 Q And he said, it's okay, we're raising capital as they
2 speak -- as we speak. Correct?

3 A Yes.

4 Q And one -- one other large -- one large investor wanting
5 to invest at least 15 million. Correct?

6 A Yes.

7 Q Okay. So this is the state of Mr. Hartline's knowledge
8 on June 10th, correct? Because no -- you're the one who
9 communicates to him, right?

10 A Yes.

11 Q Okay. Now I want to go to D-40, please. And this is an
12 email from you to Tyler Bland?

13 A Yes.

14 Q And I assume he's another FDIC person?

15 A Yes.

16 Q And what -- who's he? Do you remember?

17 A Tyler?

18 Q Yeah. What does he do, I mean.

19 A He's following up on --

20 Q No, I mean what's his position?

21 A Oh. He's a field supervisor for the Philly area office.

22 Q Okay. So he's one -- he works with you basically, or do
23 you work -- is he a supervisor?

24 A Yes, he's a supervisor.

25 Q So he's at a higher level than you?

Koch - Cross (Ega)

34

1 A I don't know what grade he is.

2 Q That's okay. I'm just trying to find out who he is.

3 Anyway, you say to him: "Hi, Tyler. I finally spoke to Eric
4 Sonnheim from FRB." That's the Federal Reserve Board, right?

5 A Yes.

6 Q "And he wanted to let us know that they downgraded the
7 BHC," which means the holding company, correct?

8 A Yes.

9 Q "To a three." And you put in parens, I already knew
10 that. Right?

11 A Yeah.

12 Q So as of June 19th, you knew that the holding company had
13 been downgraded?

14 A Yes.

15 Q And you go on to say, he also wanted to let us know they
16 placed restrictions and that they need approval to request
17 dividends from the bank to the holding company and a few
18 others. Correct?

19 A I'm sorry, what was the question?

20 Q This next sentence. It says: "He also wanted to let us
21 know they placed restrictions and that they need approval to
22 request dividends from the bank to the holding company."
23 Correct?

24 A Yes.

25 Q So he's telling -- basically Sonnheim's saying to you

Koch - Cross (Ega)

35

1 they can't pay dividends, correct?

2 A Yes.

3 Q And we already talked about the fact that they're not
4 paying dividends; there's a problem getting TARP, right?

5 A Yes.

6 Q And you go on to say: "However, the most disturbing
7 thing he relayed was that when he was talking to Brian
8 Hartline, he asked if they could be well capitalized again by
9 June 30th, and Mr. Hartline indicated that if they do not get
10 the TARP money in, they could drop below 8 percent total RBC."
11 And that means they would not be well capitalized, correct?

12 A Yes.

13 Q So Mr. Hartline is here saying that they're not going to
14 be well capitalized on June 30th, correct?

15 A Right.

16 Q Eric said, as the conversation progressed, it became
17 apparent to him that Mr. Hartline did not understand PCA and
18 it's restrictions. Isn't that what it says?

19 A That is what Eric said.

20 Q So basically he didn't understand this stuff?

21 A He didn't think so.

22 Q "Now, when I had spoken to him earlier and it was
23 apparent that they were adequately capitalized, I had focused
24 on broker deposits and he seemed to understand that much."
25 And that's about if you're only adequately capitalized, you

Koch - Cross (Ega)

36

1 can't have broker deposits, right?

2 A Right.

3 Q Totally separate issue. "However, I think we need to
4 have a chat with him to go over all the PCA restrictions."
5 Correct?

6 A Yes.

7 Q In other words, as of at least June 19th, Mr. Sonnheim
8 felt Mr. Hartline didn't understand these capital rules and
9 you --

10 MS. BARRY: Objection.

11 THE COURT: Sustained.

12 Q -- were pretty sure you agreed with him.

13 MS. BARRY: Objection.

14 THE COURT: Sustained. Sustained.

15 BY MR. EGAN:

16 Q After talking to Mr. Sonnheim, --

17 A Yes.

18 Q -- you weren't sure Mr. Hartline understood these rules
19 either, were you?

20 MS. BARRY: Objection.

21 THE COURT: Sustained.

22 MR. EGAN: If we could go to D-128, please.

23 BY MR. EGAN:

24 Q Now, this is an email from you on June 25th to Mr.
25 Hartline, subject: TARP.

Koch - Cross (Ega)

37

1 A Yes.

2 Q And apparently he's been asking you what's going on
3 because you say: "Hi, Mr. Hartline. They did follow up on
4 the TARP application, but the answer they got was that it was
5 moving through Treasury's review process." Correct?

6 A Yes.

7 Q So, in other words, this still hadn't been figured out?

8 A Yes.

9 Q "Our people do expect that it will get approved; however,
10 I would not put it in a prospectus in this environment." So
11 you're basically telling him don't tell people you definitely
12 got this yet, right?

13 A Yes.

14 Q Which, of course, is a good thing to say because they
15 didn't already have it?

16 A Right.

17 Q And then you go on to say: "I would give it a week or
18 two." Correct?

19 A Yes.

20 Q And this is June 25th, right?

21 A Yes.

22 MR. EGAN: So if we go to D-41, please.

23 Q And on that same date, at the bottom, there's an email
24 from a Bill Baxter. He's another FDIC guy, right?

25 A Yes.

Koch - Cross (Ega)

38

1 Q And he sends this to Chuck Hunter and copies you?

2 A Yes.

3 Q And he basically says: "Could you please provide an
4 update on UST Case 606." That was the Nova case number,
5 right?

6 A Yes.

7 Q "It was approved by council, but not yet moved forward."
8 Correct?

9 A Yes.

10 Q So, in other words, it's got to go through more hoops.
11 And then the next email up is again from a Shanelle Davis, and
12 she's actually at Treasury, right?

13 A Yes.

14 Q And Treasury, they're the ones that are actually --
15 somebody there is making this decision, right?

16 A Yes.

17 Q She writes: "Bill, this application has been approved by
18 council and is currently moving through the standard CPP
19 review phases." Now, you don't really know what those are,
20 right?

21 A No.

22 Q Okay. "Please let me know if you have additional
23 questions." Correct?

24 A Yes.

25 Q And then Bill writes back to you and he says: "Short

Koch - Cross (Ega)

39

1 answer, Treasury's invest committee has not yet approved this
2 application for participation. Tell the bank to be patient.
3 Give it a few more weeks." Correct?

4 A Yes.

5 Q Now, this email is at 11:41 on June 25th, and the one you
6 just looked at from you to Brian is on June 25th, same day, at
7 12:12. So, basically, would it be fair to say that you were
8 checking on this for Mr. Hartline and you got an answer like
9 we'll get back to you in a couple weeks, and so that's what
10 you told him?

11 A I don't know. I --

12 Q Okay. But I mean, that's -- the one email is right
13 before the other, so -- well, put it this way, you told Mr.
14 Hartline it would be a couple weeks because Mr. Baxter told
15 you it would be a couple weeks?

16 A Probably.

17 Q Okay. And this is June 25th, right?

18 A Yes.

19 Q Okay.

20 MR. EGAN: If we could go to D-1327.

21 BY MR. EGAN:

22 Q And this is to you -- from you to a Tyler Bland again and
23 a bunch of other folks, and the subject is Nova Bank, correct?

24 A Yes.

25 Q And basically you're telling them that on June 25th, that

Koch - Cross (Ega)

40

1 same day we just talked about, "The bank amended its call
2 reports to correctly reflect the subordinate subinvestment
3 quality investments." So, in other words, meaning that they
4 did what they were supposed to with the call reports,
5 straightened them out, because they weren't really well
6 capitalized because these investments aren't worth what they
7 thought they were, right?

8 A They amended their call reports --

9 Q Right.

10 A -- for the --

11 Q And then you go on to say: "On a positive note, the bank
12 received 5 million in capital on June 30th, which they don't
13 think will be enough to bring them back to well capitalized,
14 but it's a start." Right?

15 A Yes.

16 Q So clearly Nova's not telling you that this 5 million is
17 making them well capitalized, correct?

18 A No.

19 Q All right. Now, Mr. Singleton responds to you, and he is
20 a supervisory examiner with the Philadelphia FO. What's that?

21 A The Philadelphia field office.

22 Q Okay. So is that FDIC?

23 A Yes.

24 Q Okay. Sorry. Anyway, he writes back to you and says:

25 "Thanks. The state is scheduled to commence the 2009 exam on

Koch - Cross (Ega)

41

1 10/5/09." So what that means is, in October there's going to
2 be an examination?

3 A Yes.

4 Q And that examination's going to look into all this stuff
5 anyway, correct?

6 A Yes.

7 Q And then we'll find out what their capital is at that
8 point, right?

9 A That's not what he said. He just --

10 Q No, but I mean --

11 A -- let me know when the exam was going to occur.

12 Q Yeah. He didn't say that, but what I'm saying to you is,
13 when they do that examination, obviously you're going to go in
14 there and look at everything and determine what their capital
15 is, right? That's one of the reasons you do it --

16 A That's part of the Camels, yes.

17 Q Right. Okay.

18 MR. EGAN: And now if we can go to -- let me skip
19 that one -- G-64. Has this been admitted?

20 MR. MORGAN: No.

21 MR. EGAN: Okay. So don't publish this.

22 BY MR. EGAN:

23 Q G-64 is a letter from Cheryl Kim Hartline to the Federal
24 Reserve Bank, correct?

25 A Yes.

Koch - Cross (Ega)

42

1 Q And it is the letter that contains the application for
2 change of control of Mr. Levin, correct?

3 A Yes.

4 Q And just while we're on it, Cheryl Kim Hartline, she's
5 the corporate secretary, correct?

6 A Yes.

7 Q Yesterday I think you said she was Brian's secretary?

8 A Yeah, I think she was the corporate secretary.

9 Q Right. It was a little bit -- little bit more of a job
10 than that, right?

11 A Yes.

12 Q And you -- you know Ms. Hartline, correct?

13 A I had talked to her on the phone.

14 Q Okay. Anyway, you got a copy of this thing, right?

15 A I'm not sure if I did.

16 Q Okay.

17 MR. EGAN: If we could have D-1148.

18 BY MR. EGAN:

19 Q And this is an email from Jeff Hanuscin to you?

20 A Right.

21 Q And it's dated Wednesday, July 29th, correct?

22 A Yes.

23 Q And the attachment is the 7/29/09 FED application of
24 Levin?

25 A Yes. Then I did get it.

Koch - Cross (Ega)

43

1 Q So you did get it?

2 A Um-hmm.

3 Q Which I wouldn't remember either, so -- anyway, if we
4 look at this document --

5 MR. EGAN: If we can go back to 64. Sorry about
6 that.

7 BY MR. EGAN:

8 Q It's re: George G. Levin, correct?

9 A Yes.

10 Q And it contains seven copies of an inter-agency
11 biographical and financial report and inter-agency change in
12 control with a copy of Mr. Levin's personal financial
13 statements, correct?

14 A Yes.

15 Q And that's Mr. Levin's personal financial statements,
16 correct?

17 A Yes.

18 Q And this is not the bank's application, this is Mr.
19 Levin's application, isn't it?

20 A Yes.

21 Q And Mr. Levin's the one who signs this application?

22 A I don't know.

23 Q Well, we'll get there. Okay. Anyway, if we could go to
24 page 6, you were asked a bunch of questions yesterday about
25 whether anybody ever told you if Mr. Levin borrowed any money

Koch - Cross (Ega)

44

1 in order to make his investments, correct?

2 A Yes.

3 Q And you said that was an important issue for you?

4 A Yes.

5 Q And that was something you would have shared with whoever
6 it was -- with Mr. Hunter, right?

7 A Yes.

8 Q And maybe he would have shared with other people?

9 A Yes.

10 MR. EGAN: Anyway, if we can go to the top of there
11 and blow up that first balloon there.

12 BY MR. EGAN:

13 Q It says provide the following information, and it's the
14 name of the acquirer or transferee. And in the last column is
15 the source and amount of funds. See that?

16 A Yes.

17 Q And it says -- well, why don't you read it.

18 A "Half from personal finances and half from borrowed
19 funds."

20 MR. EGAN: And if we could go to page 8.

21 Q This is a certification for this application, correct?

22 A Yes.

23 Q And it says: "I certify this information is correct."
24 Right?

25 A Yes.

Koch - Cross (Ega)

45

1 Q And it says: "I acknowledge that this final action is,"
2 and then on and on and on with a bunch of stuff, right?

3 A Yes.

4 Q And it's signed by whom?

5 A It says George Levin. I --

6 Q Well, yeah, you don't know his signature. Good point.

7 A The signature's a little --

8 Q Okey-doke. If we could go to page 12. That's an inter-
9 agency biographical financial report?

10 A Yes.

11 Q And that person it's for is George Levin, correct?

12 A Yes.

13 Q And if we could go to page 110 -- page 19, I guess it is.
14 That's a financial report of George Levin, correct?

15 A Yes.

16 Q And this says he's worth \$400 million bucks, correct?

17 A Yes.

18 Q And if we go to page -- sorry about that -- 26. It's
19 signed by Mr. Levin, correct?

20 A Yes.

21 Q Okay. Now, I want to take you back real quick to June
22 25th. And why don't we go to D-41. And this is the email
23 from Mr. Baxter to Mr. Hunter copied to you that says,
24 basically, tell the bank to be patient and give it a few more
25 weeks, right?

Koch - Cross (Ega)

46

1 A Yes.

2 Q And that's what you did, right, because you're just
3 basically communicating back and forth?

4 A Yes.

5 MR. EGAN: So if we could now play tape 200.

6 MR. MORGAN: The August tape?

7 MR. EGAN: And there's -- if I can have a moment,
8 Your Honor?

9 THE COURT: Yes, sir.

10 (Pause)

11 MR. EGAN: And I believe, Your Honor, there's a
12 stipulation that this tape took place on August 19th. Thank
13 you.

14 (Audiotape played)

15 BY MR. EGAN:

16 Q And that is a tape of a call that Mr. Hartline made to
17 you, correct?

18 A Yes.

19 Q And it's August 19th, correct?

20 A Yes.

21 Q So it's been more than one or two weeks?

22 A From -- I don't remember the last date.

23 Q June 25th.

24 A June 25th, yes.

25 Q Now, obviously if anybody told you anything, you would

Koch - Cross (Ega)

47

1 have told Mr. Hartline, right?

2 A Yes.

3 Q You're sort of in the same boat he is; you -- you don't
4 know what's going on and nobody's telling you, right?

5 A Yes.

6 Q Well, lo and behold, August 25th, G-75. We have -- and
7 this has been published -- this is the letter from Mr. Shatner
8 -- no, not Shatner, Schaffner, which is some kind of a
9 conditional approval of the loan, correct -- of the TARP?

10 A Yes.

11 Q And he basically says that we're going to give you the
12 TARP if you do a bunch of other things, including raise
13 another 10 million bucks?

14 A Yes.

15 Q And if we go to page 2, it says in the middle paragraph
16 we note -- if we could have that -- "We note Treasury may
17 require additional representations," -- that means more
18 information from you, right, from the bank?

19 A Yes.

20 Q -- "warranties or covenants based on the outcome of
21 further business and legal due diligence," -- meaning if
22 anything changes, we want to know about it, right? It might
23 affect us?

24 A Yes.

25 Q -- "disclosures made to Treasury by the applicant,

Koch - Cross (Ega)

48

1 pursuant to the SPA" -- do you know what that is?

2 A No.

3 Q Me either. -- "or the discovery of additional
4 information regarding the applicant." Correct?

5 A Yes.

6 Q And one of the ways you would get discovery of additional
7 information would be through examinations, correct?

8 A Yes.

9 Q And there was an examination scheduled for October,
10 wasn't there?

11 A Yes.

12 Q Because we just talked about that.

13 A Yes.

14 Q And that -- that examination that took place in October
15 didn't go real well, did it?

16 A They got downgraded.

17 Q And that takes us to Government 121, which I believe is
18 published.

19 MR. MORGAN: No.

20 MR. EGAN: No? I'm sorry. Then Government 121 for
21 the witness only, please.

22 BY MR. EGAN:

23 Q And I'm not going to go through this whole thing, but if
24 you want to look at the first page, read those two.

25 (Pause)

Koch - Cross (Ega)

49

1 Q The upshoot is, they get downgraded to a three, right?

2 A Yes.

3 Q As of November 11th, 2009, right?

4 A Yes.

5 Q So there's a meeting that you had with them about that,
6 right?

7 A Yes.

8 Q And actually you're not the bearer of the bad news, the
9 examiners are, but you're there because it's your bank?

10 A Right, and I was going to deliver that letter to the
11 bank.

12 Q Oh, you were the bearer of the bad news.

13 A No, they -- they gave all the results of the --

14 Q Okay.

15 A -- exam.

16 Q And the letter is the letter that puts even more
17 restrictions on them, correct?

18 A Yes.

19 Q Okay. So now it's November 11th and there's a meeting,
20 and at that meeting the examiners tell the bank they're
21 downgrading them, correct?

22 A Yes.

23 Q The holding company was downgraded in June, correct?

24 A Yes.

25 Q The holding company hasn't been able to pay dividends

Koch - Cross (Ega)

50

1 since June, correct?

2 A I'm not sure.

3 Q Well, there was a restriction put on that they couldn't
4 pay --

5 A Yeah. I don't know what the date was.

6 Q Okay. Well, if I represent to you that it was June,
7 since we covered it a while ago, do you have a problem with
8 that?

9 A Yes -- no, I don't have a problem.

10 Q Thanks. Anyway, yet this TARP application has still not
11 been considered by this investment council, correct?

12 A I don't know.

13 Q Well, they made their decision on December 18th.

14 A Okay.

15 Q But you don't really know what the heck they were doing?

16 A No, I didn't know what was going on.

17 Q That's fine. Anyway, the Government showed you Exhibit
18 125, so I'd like to talk about it a little bit. And the
19 bottom email is an email from you to Ray Harper.

20 A Yes.

21 Q He's a state guy, right?

22 A Yes.

23 Q And it says -- apparently he wasn't at the meeting; I
24 guess his examiners were. He's like a higher-up guy?

25 A I don't believe he was at the meeting because I told him

Koch - Cross (Ega)

51

1 the examiners did a good job presenting their findings.

2 Q Oh, so you went to the meeting by yourself?

3 A With the examiners.

4 Q Oh, okay. Oh, right. I'm sorry. Okay. All right. So,
5 anyhow, you tell him the meeting went well; the examiners did
6 a great job presenting the findings. In other words, they
7 made it very clear why they downgraded the bank and they did
8 it in a very appropriate way, and you felt that they had
9 acquitted themselves professionally, right?

10 A Yes. And you then go on to say: "However, the president
11 did not mention that Mr. Levin was not (sic) longer going to
12 invest. All he said was they needed 3 million more."

13 Correct?

14 A I don't see that part of the letter.

15 Q Oh, I'm sorry, I'm on the wrong -- we have to go to the
16 lower email.

17 MR. EGAN: The lower email, please. Yeah, there you
18 go.

19 BY MR. EGAN:

20 Q Right?

21 A Yes.

22 Q "However, the president" -- okay. You said: "All he
23 said was that they needed \$3 million more." Correct?

24 A Yes.

25 Q Now, Mr. Levin was supposed to put in \$15 million, right?

Koch - Cross (Ega)

52

1 A Yes.

2 Q And if Mr. Levin had put in his \$10 million, they
3 wouldn't have needed \$3 million more, would they have?

4 A I don't know. Maybe they got other investors.

5 Q Well, they did. I'm going to ask you about it in a
6 little bit. But, I mean, if Mr. Levin had put in his 10
7 million, that would have been the whole 10 million, right?

8 A Yes, because he had already put five in.

9 Q Right, so they wouldn't have needed three more?

10 A Right.

11 Q In any event, at the bottom you say: "There's no way,
12 there's a two, unless they get the funds in before the ROE is
13 finished processing." So, in other words, there's no way this
14 thing is getting changed, correct?

15 A I didn't think so.

16 Q And truth be told, obviously you don't make the
17 decisions, but at this point in time with the inability to pay
18 dividends, the downgrade of the holding company, the downgrade
19 of the bank, there's no way they're getting TARP?

20 A Probably not, if they weren't well capitalized.

21 Q So now I'm going to take you to December 15th and
22 Government's 142. And that says -- well, first of all, it's a
23 restricted -- it's a Federal Reserve document, correct?

24 A Yes.

25 Q And you're not in the Federal Reserve?

Koch - Cross (Ega)

53

1 A No.

2 Q But do you remember some of the conversations with Mr.
3 Hartline that he had finally in December called the Federal
4 Reserve?

5 A I don't remember.

6 Q Well, this is a memorialization of a phone call between
7 Mr. Hartline and the Federal Reserve.

8 A Right.

9 Q So you weren't any party to this, right?

10 A I don't think so, no.

11 Q Okay. I'll --

12 MR. EGAN: Let's get this exhibit, and we'll go to
13 Government 147, which I believe has been admitted.

14 BY MR. EGAN:

15 Q Well, this is dated December 16th and it says: "I am
16 very perplexed by the current situation that Nova is in."
17 Correct?

18 A Yes.

19 Q So now Mr. Hartline's gone from confused to perplexed,
20 right?

21 A Yes.

22 Q And the second paragraph says: "Yesterday a concern was
23 raised by the Federal Reserve Bank that Nova Financial
24 Holdings, Inc. couldn't make the debt service payments. The
25 Federal Reserve Bank issued a letter dated June 17th noting

Koch - Cross (Ega)

54

1 that the company could not make its trust preferred interest
2 payments without their prior consent. Their letter was issued
3 well before Nova was approved for CPP funding on August 25th,
4 2009. I am not sure why this concern is being raised now when
5 these facts existed at the time Nova received its CPP funding
6 approval." Correct?

7 A Yes.

8 Q So he's kind of frustrated, right?

9 A Yes.

10 Q And he's basically saying you guys knew this in June, why
11 didn't you just tell me, right?

12 A Yes.

13 MS. BARRY: Objection.

14 THE COURT: Sustained.

15 MR. EGAN: If we can have 201, please. Play tape
16 201.

17 (Pause)

18 MR. EGAN: And this is dated December 14th.

19 (Audiotape played)

20 BY MR. EGAN:

21 Q So in this call, he's basically saying, sounds like they
22 want more info and I'm not really sure who to send it to, but
23 you're -- tag, you're it, right?

24 A Yes.

25 Q Okay. And so as a result of that, shortly after there --

Koch - Cross (Ega)

55

1 MR. EGAN: If we could have Government's 140, which
2 was published.

3 Q -- he sends you this email, right?

4 A Yes.

5 Q And he says: "Dear Lisa, sorry for the delay in getting
6 this information to you. Please find the attached letter of
7 explanation and attachments as discussed this afternoon.
8 Please let me know if there's anything further I can send to
9 you. We appreciate your assistance getting this to whomever
10 needs to review it and provide our approval."

11 So this is the information that he thought he was
12 supposed to be sending, based on whatever conversation you had
13 with the Fed, right?

14 A Yes.

15 Q And he's basically saying to you, whomever it needs to go
16 to. He has no clue who it needs to go to, right?

17 A Yes.

18 Q And actually you don't even really know who it needs to
19 go to, do you?

20 A I would send it up through Chuck Hunter.

21 Q And you have no idea what he did with it?

22 A No.

23 Q Now, that's a bunch of information about the bank and its
24 -- and its state, correct?

25 A (No audible response)

Koch - Cross (Ega)

56

1 Q And it was sent to you on December 15th at 6 p.m.

2 A Yes.

3 MR. EGAN: So now if we could have 204 played,
4 please, which is December 15th.

5 (Audiotape played)

6 BY MR. EGAN:

7 Q So he says a couple things in there. One, he says
8 several times that if they can't pay the dividends, there will
9 be no approval, correct?

10 A The dividends for the TARP.

11 Q Yeah.

12 A Yes.

13 Q And he also says it's all the Fed's fault. He's
14 basically saying that the -- blame it on the Reserve, right?

15 A Well, I --

16 MS. BARRY: Objection, Your Honor.

17 THE COURT: The objection is --

18 MR. EGAN: I'll withdraw it.

19 THE COURT: -- sustained. I think it's time for us
20 to take our morning recess, please.

21 THE WITNESS: Thank you.

22 (Jury out at 10:39 a.m.)

23 THE COURT: You may step down. Thank you. I'm just
24 contemplating my discussion with --

25 MR. EGAN: Oh. Our sleeping juror?

Koch - Cross (Ega)

57

1 THE COURT: All right.

2 MR. EGAN: I'm a little insulted.

3 THE COURT: Thank you. 15 minutes, please.

4 MR. EGAN: Thank you, Your Honor.

5 MS. BARRY: Thank you.

6 (Recess at 10:40 a.m. to 11:11 a.m.)

7 THE COURT: Ready, counsel?

8 MR. EGAN: Yes, Your Honor.

9 MS. BARRY: Yes, Your Honor.

10 THE CLERK: All rise.

11 (Jury in at 11:13 a.m.)

12 THE COURT: Thank you. You may be seated. We'll
13 make the adjustments or attempt to make the adjustments on the
14 monitor over the luncheon recess.

15 MS. BARRY: Thank you.

16 THE COURT: Thank you.

17 MR. EGAN: May I proceed?

18 THE COURT: You may proceed, counsel.

19 MR. EGAN: Thank you, Your Honor.

20 BY MR. EGAN:

21 Q Hi, Ms. Koch.

22 A Hi.

23 Q Right before the break we were talking about what was
24 going on in December of 2009, right?

25 A Yes.

Koch - Cross (Ega)

58

1 Q And at that point, we heard a voicemail from Mr. Baxter,
2 correct?

3 A Yes.

4 Q And basically what he's saying is, this thing isn't going
5 to happen, right?

6 A Yes.

7 Q Okay. And you don't know exactly when the council met
8 and what the -- what the council's decision was based on,
9 correct? We've already --

10 A No.

11 Q -- established that. But you do know that as a result of
12 that, you had to write up a basis for denial. Do you remember
13 that?

14 A Yes.

15 Q Okay. And you were writing up that basis for denial
16 because the council just wanted it essentially for its files
17 or, you know, to finish the process, for lack of a better way
18 of putting it?

19 A I don't know why they wanted it.

20 Q You don't know why they wanted it. But they asked you to
21 write it up?

22 A Yes.

23 Q And before they -- and that basically took from around
24 the 15th to the 22nd, there was a back and forth that -- I got
25 to show you emails?

Koch - Cross (Ega)

59

1 A Sure.

2 Q Okay.

3 MR. EGAN: If we could have D-81. And if we could
4 go to the bottom of page 2. And actually that's not -- you're
5 not on the bottom. On the second one up, I'm sorry.

6 BY MR. EGAN:

7 Q And that's from Bill Baxter to Amy Monegro?

8 A Yes.

9 Q And Amy Monegro is another FDIC person, correct?

10 A Yes.

11 Q And he writes Friday, correct?

12 A Yes.

13 Q And that's the day, I assume -- this is Thursday,
14 December 17th. That's the day, I assume, they want your --
15 well, let's read it. "Given the four components for AQ and
16 earnings" -- AQ is asset quality, correct?

17 A Yes.

18 Q And earnings, those are those two things in the Camels we
19 talked about?

20 A Yes.

21 Q They're different buckets than the capital, right?

22 A Yes.

23 Q "Given the four components for those, I don't see this
24 getting approved." Correct?

25 A Yes.

Koch - Cross (Ega)

60

1 Q Right. And then he talks about maybe we could go back to
2 council, but then he says: "Frankly, I don't support it
3 either, given this fact pattern." Correct?

4 A Yes.

5 Q Okay. And so essentially, if we could go down to the
6 email below, and -- and just read that to yourself. Does that
7 refresh your recollection as to when this denial had to be
8 written up by?

9 A Well, in the previous email, he said Friday.

10 Q Correct. So that would be Friday, December 18th,
11 correct?

12 A Right.

13 Q Okay. So by Friday, December 18th, they wanted you to
14 write up a denial, correct?

15 A Yes.

16 Q And you did write up a denial, right?

17 A Yes.

18 MR. EGAN: And if we could go D-83, please.

19 BY MR. EGAN:

20 Q And that is an email from Amy Monegro to you, correct?

21 A Yes.

22 Q And she basically says: "CDM needs to go to WO today."
23 Case decision memo, I assume?

24 A Yes.

25 Q WO is?

Koch - Cross (Ega)

61

1 A The Washington office.

2 Q Washington office. Okay. And then the first line is:
3 "Lisa, as you know, we have to write this as a denial
4 recommendation." Correct?

5 A Yes.

6 Q "And it needs to go down to Baxter today."

7 A Yes.

8 Q And then there's a bunch of reasons why, and they had
9 pretty much the reasons we've already discussed, correct?
10 Deferred trust payments, that's the dividends, right?

11 A Yes.

12 Q Adequately under-capitalized position, correct?

13 A Yes.

14 Q Bank's history. Proposed three composite. That's the --
15 the composite from the October examination by the Pennsylvania
16 Department of Banking, correct?

17 A Yes.

18 Q Okay. And the proposed for AQ&E, that's those two other
19 buckets besides capital, right?

20 A Yes.

21 Q Okay. And so you wrote it up, as you were instructed to,
22 right?

23 A Yes.

24 Q Okay. Now, right before all of that, we heard from Mr.
25 Hartline on his voicemail saying, hey, they've asked me for a

Koch - Cross (Ega)

62

1 bunch of information and I'm not sure where to send it, but
2 apparently I'm supposed to send it to you, correct?

3 A I don't remember.

4 Q Well, we just listened to it right before lunch.

5 A I don't remember.

6 Q Okay. Well, do you remember the voicemail we listened to
7 right before lunch where Mr. Hartline said he was going to
8 send you more information?

9 A About the wires?

10 Q Yeah, about where the money was coming from.

11 A Yes.

12 Q Okay. Yeah, that's all I want to talk about. And as a
13 result of that, Mr. Hanuscin did send you information,
14 correct?

15 A Yes.

16 Q You looked at it yesterday; we talked about it a bunch,
17 right?

18 A Yes.

19 Q Okay.

20 MR. EGAN: If we could have Government's 145,
21 please. And I believe this is published. It is published.

22 BY MR. EGAN:

23 Q And this is an email from Mr. Hanuscin to you on the
24 16th, right?

25 A Yes.

Koch - Cross (Ega)

63

1 Q And it says: "Here is most of the support for the cash
2 received. The remainder will follow shortly." Correct?

3 A Yes.

4 Q So this is the information that the Government was asking
5 you about that he sent you that you -- I believe you sent on
6 to whomever in D.C.?

7 A I sent to Chuck.

8 Q Okay. And this is also the same day as Chuck's call to
9 you, correct, --

10 A I don't remember.

11 Q -- that we listened to? Okay. Well, that's okay. We
12 don't have to go back to that. Anyway, if you could go to
13 page 2 and to the bottom of the list -- page 2 of 145.

14 MR. EGAN: Again, if we can have the last three
15 names on that list of investors. Can you make that a little
16 bigger? Thank you.

17 BY MR. EGAN:

18 Q You see a gentleman by the name of Alan S. Fellheimer,
19 correct?

20 A Yes.

21 Q And it indicates that he's making a \$100,000 investment,
22 correct?

23 A Yes.

24 Q And -- and then Edward DiMarcantonio, and then Mr.
25 Hartline himself is actually investing, correct?

Koch - Cross (Ega)

64

1 A Yes.

2 Q So on December 16th, he's -- he's still investing in --
3 in this bank, correct?

4 A Yes.

5 Q Now, if we could go to page 36 of this document. Now,
6 one of the things that they -- they thought they had been
7 asked for was support for where the money was coming from,
8 right?

9 A Yes.

10 Q And so all of these pages, and there's 47 of them, is
11 that support, correct?

12 A Yes.

13 Q Okay. And this is the support for Mr. Fellheimer's
14 investment, and you see that there? And it's an email from
15 Mr. Hartline to Mr. Fellheimer and apparently his spouse, and
16 it says: "From where to pull the funds for your investment.
17 I understand you'll be out of the office tomorrow." Do you
18 see that?

19 A Yes.

20 Q And above that, Mr. Fellheimer says: "My credit line."

21 A Yes.

22 Q Now, Mr. Fellheimer is telling Mr. Hartline, who works at
23 Nova Bank, to pull it from his credit line, correct?

24 A Yes.

25 Q And Mr. Hartline certainly couldn't pull it from his

Koch - Cross (Ega)

65

1 credit line anywhere other than Nova Bank, correct?

2 A I don't know.

3 Q And this information that Mr. Fellheimer was using his
4 credit line from Nova Bank to fund his investment was provided
5 to you, correct?

6 A Yes, it was like 30 -- 47 pages --

7 Q Right. But it's --

8 A -- of information.

9 Q You got it, right?

10 A Yes.

11 Q So certainly if he was hiding the fact that it came from
12 his credit line, he wouldn't have sent you that, would he?

13 MS. BARRY: Objection.

14 THE COURT: Sustained.

15 BY MR. EGAN:

16 Q Now, ultimately we all know no TARP were -- were ever
17 given to the bank, correct?

18 A No.

19 MR. EGAN: You can take that down.

20 Q And you again don't know why that decision was made,
21 right?

22 A I guess it was based on --

23 Q Don't guess. You don't really know --

24 A All right. I don't know, no.

25 Q Right. Because you don't even know what they considered?

Koch - Cross (Ega)

66

1 A Right.

2 Q But the bank didn't stop operating in December of 2009,
3 did it?

4 A No.

5 Q And in fact you supervised the bank for some time going
6 forward from then, didn't you?

7 A In January, I went to another job and I stopped
8 supervising the bank.

9 Q So you moved to a different region?

10 A I moved to New Jersey out in the field.

11 Q Now, we heard a lot of talk yesterday from other
12 witnesses about one of the bases for determination of TARP
13 being the sustainability of the bank. Basically, they want to
14 make sure they were going to stick around, right?

15 MS. BARRY: Objection.

16 THE COURT: Sustained.

17 BY MR. EGAN:

18 Q Well, are you familiar with -- are you aware that one of
19 the criteria that was considered was the sustainability of the
20 bank?

21 A I -- yes.

22 Q Okay. And that was -- and that basically meant are they
23 going to make it through this financial crisis and still be
24 around for a while, right?

25 A Yes.

Koch - Cross (Dun)

67

1 Q And you're aware or you are not that Nova was actually in
2 existence until October of 2012?

3 A No.

4 MR. EGAN: Nothing further, Your Honor.

5 THE COURT: All right. Counsel?

6 MR. DUNCAN: Thank you, Your Honor.

7 (Pause)

8 MR. DUNCAN: May I proceed, Your Honor?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. DUNCAN:

12 Q Good morning again, Ms. Koch.

13 A Good morning.

14 Q Ms. Koch, other than our brief conversation yesterday in
15 the witness room and then saying hello this morning, you and I
16 have never spoken before, have we?

17 A No, not that I -- I don't think so.

18 Q You wouldn't remember me?

19 MS. BARRY: Objection.

20 Q Ma'am --

21 MR. DUNCAN: I'll withdraw that.

22 THE COURT: Sustained.

23 BY MR. DUNCAN:

24 Q Ma'am, you first spoke to the Government investigators on
25 March 7th, 2013, is that correct?

Koch - Cross (Dun)

68

1 A Yes.

2 Q That was almost four years after Nova put in their TARP
3 application?

4 A Yes.

5 Q The next time you spoke to them was in May of 2014.
6 That's more than a year after you spoke to them the first
7 time, right?

8 A I don't remember the exact dates.

9 Q But that sounds about right, right?

10 A Maybe, yeah.

11 Q If I had a document in my hand showing -- actually, I
12 believe this is Defense 238.

13 MR. DUNCAN: May I approach, Your Honor?

14 THE COURT: Yes, sir.

15 MS. BARRY: Objection, Your Honor.

16 THE COURT: May I see you, please?

17 (Sidebar begins)

18 THE COURT: All right. Counsel?

19 MS. BARRY: Your Honor, this is not a statement of
20 the witness. It -- and he's not -- is he impeaching her with
21 something at this point and she's never seen these reports?

22 MR. DUNCAN: She doesn't remember. I'm saying did
23 -- does this refresh your recollection as to the date? The
24 answer will be that it will or it won't.

25 THE COURT: All right. As to the date --

Koch - Cross (Dun)

69

1 MS. BARRY: Yeah.

2 THE COURT: -- or the content?

3 MS. BARRY: Yeah.

4 MR. DUNCAN: Just the date, Your Honor.

5 THE COURT: All right. It seems to me you can do
6 that.

7 (Sidebar ends)

8 THE COURT: You may continue. Overruled.

9 MR. DUNCAN: May I proceed? Thank you, Your Honor.
10 May I approach the witness, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. DUNCAN:

13 Q Ms. Koch, --

14 A Yes.

15 Q -- let's take a moment. I would -- actually, I think I
16 got it wrong. I said you met with him. You actually had a
17 telephone conference with him, correct?

18 A It looks like it.

19 Q And you agree that the date on that is May 28th, 2014?

20 A Yes.

21 Q So that refreshes your recollection as to the date?

22 A Yes.

23 Q So you would agree you talked to them by telephone on May
24 28th, 2014, 14 months after you first talked to them, right?

25 A Apparently I did.

Koch - Cross (Dun)

70

1 Q Okay. And that's approximately now five years after the
2 TARP application, right?

3 A Yes.

4 Q Okay. The next time you spoke to them was almost a year
5 later, correct?

6 A I'm not sure.

7 Q Okay. Didn't you speak to them in September of 2015,
8 about five, six months ago?

9 A I don't know the dates.

10 Q Okay. But if I said to you that that's probably about
11 right and I have a document in my hand --

12 A If you had a document, it --

13 Q Would you like to see it?

14 A Sure.

15 MR. DUNCAN: Your Honor, again, may I approach?

16 THE COURT: Yes, sir.

17 MR. DUNCAN: This is Defense -- I'm going to need
18 some help for a moment -- this is Defense 231.

19 BY MR. DUNCAN:

20 Q Ms. Koch, I'm not trying to trick you on the dates, I
21 just want to make sure we both are talking about the same
22 thing. So you agree it's September 16th, 2015?

23 MS. BARRY: Objection.

24 A Yes.

25 Q (Inaudible 11:28:01) of Lisa Koch, that's you, the senior

Koch - Cross (Dun)

71

1 risk examiner, FDIC?

2 A Yes.

3 Q Okay. So you'd agree that you next spoke to them for the
4 third time six years after the TARP application got put in
5 with the Government investigators, right?

6 A Yes.

7 Q And then a couple of -- maybe about four or five weeks,
8 two, three weeks afterwards, you spoke to them for the fourth
9 time, right?

10 A I'm not certain of the dates.

11 Q All right.

12 A And I'm not sure how many times I met with them.

13 Q If I had -- if I had an exhibit, you'd probably think I'd
14 probably be right, right?

15 A Perhaps.

16 Q Okay. We don't need to go into it.

17 MR. DUNCAN: Could we see Government's Exhibit 22,
18 which has been entered into evidence and publish that, please?

19 BY MR. DUNCAN:

20 Q See that, Ms. Koch?

21 A Yes.

22 Q Okay. Government's 22 is an email chain that you're on,
23 correct?

24 A Yes.

25 Q You talk in Government's 22 about the various things

Koch - Cross (Dun)

72

1 involving the TARP and the Nova application, correct?

2 A Yes.

3 Q And one of the things you talk about is the end of the
4 fiscal quarter, right, June 30th?

5 A I don't see it, but --

6 Q Okay. Well, the end of a fiscal quarter is an important
7 date for regulations, right?

8 A Yes.

9 Q Why is --

10 A Oh, I see it now. Yes, it is in there.

11 Q It's there. There it's June 30th, right?

12 A Yes.

13 Q Okay. And that's an important date because that's the
14 end of a fiscal quarter, right?

15 A Yes.

16 Q And in the bank regulatory world and in the public
17 company world, end of quarters are important, right?

18 A Yes.

19 Q And why are they important in the bank regulatory world?

20 A Because that's when they file their call report.

21 Q And the call report is what?

22 A A quarterly report that the bank submits us with various
23 information.

24 Q And that goes to issues like their capital ratio,
25 correct?

Koch - Cross (Dun)

73

1 A Yes, that's in there.

2 Q And capital ratio is a very important marking point for
3 bank regulators, correct?

4 A Yes.

5 Q So if you get a call report or someone's talking to you
6 about a call report, you realize that's important for your
7 job, right?

8 A Yes.

9 Q So if you look at Government's Exhibit 22, one of the
10 things, if you look down at the bottom email -- I'm sorry, the
11 top email, the last paragraph.

12 MR. DUNCAN: If you could highlight that, Sean,
13 please? It's the one beginning FYI.

14 BY MR. DUNCAN:

15 Q So this is Mr. Hartline writing to you and he says:
16 "FYI, today we submitted our application to the Fed to become
17 a financial holding company." And it goes on and it says --
18 Mr. Hartline tells you: "We are trying to meet our drop dead
19 date in the DVFG merger agreement of June 30th." Do you see
20 that?

21 A Yes.

22 Q So the June 30th date is a very important date to the
23 bank because it relates to their Delaware Valley Financial
24 Group merger, right?

25 A Yes.

Koch - Cross (Dun)

74

1 Q And that's important for you to know and for government
2 regulators to know because you have to determine whether
3 you're going to let them buy Delaware Valley Financial Group,
4 correct?

5 A I'm not sure if they needed approval for that or not.

6 Q Okay. Well, go to the next line. Mr. Hartline asks you:
7 "Is there anything else you need from Nova pertaining to
8 DVFG?" Do you see that?

9 A Um-hmm, yes.

10 Q So he's asking you if you want to see more information,
11 correct?

12 A Yes.

13 Q And one of the reasons they want to see more information
14 is, you regulate banks and you determine whether they're
15 financially sound enough to take on more business or more
16 debt, because they actually have to pay for DVFG, don't they?

17 A I would assume so.

18 Q And that's an issue that, since you're regulating federal
19 banks and you're trusting all our money, you want to make sure
20 that they're financially sound enough to get Delaware Valley
21 Financial Group, correct?

22 A Yes.

23 Q And the deadline that he's worried about is June 30th for
24 Delaware Valley Financial Group. There's not a word in there
25 about the TARP application, is there?

Koch - Cross (Dun)

75

1 A No.

2 Q If you'd look at the email below that, your email to Mr.
3 Hartline, do you see on the first line --

4 MR. DUNCAN: If you would blow that up, Sean, for
5 me, please. Just the whole first paragraph there.

6 BY MR. DUNCAN:

7 Q Mr. Hartline's telling you -- he just told you he left
8 you a message and he says: "We got great news. We might have
9 an investor." Right?

10 A Right.

11 Q No guarantee an investor's coming, is there?

12 A No.

13 Q He then goes on to tell you that this investor might need
14 something special; he might need a change in control
15 application, correct?

16 A Yes.

17 Q And what's that change in control application? What's
18 the purpose of that?

19 A It's to own anything over 9.9 percent of the bank stock.

20 Q That's a decision made by the Federal Reserve Board, not
21 your group, right?

22 A No.

23 Q I'm sorry, I complicated that question for you. It's a
24 decision made by the Federal --

25 A Yes.

Koch - Cross (Dun)

76

1 Q -- Reserve Board? It's not a decision made by the FDIC?

2 A No.

3 Q Thank you. Mr. Hartline says in --

4 MR. DUNCAN: Again, Sean, I'm sorry to keep doing a
5 yo-yo on you. Go back up to the top email. First paragraph.
6 Highlight that all for us, please.

7 BY MR. DUNCAN:

8 Q Mr. Egan did this, but I want to make a different point
9 here. If you look at the very last line of the first full
10 paragraph, Mr. Hartline says: "I would prefer this info go no
11 further until I get a firm understanding how much he will
12 invest." You would agree at that time Mr. Hartline had no
13 idea exactly how much infor -- how much money this investor,
14 whoever it was, was going to invest, correct?

15 MS. BARRY: Objection as to what's in Mr. Hartline's
16 mind.

17 THE COURT: Sustained.

18 BY MR. DUNCAN:

19 Q Okay. Well, Mr. Hartline's asking you -- telling you
20 that he doesn't have a firm understanding yet, correct?

21 A Yes.

22 Q What did you interpret from that?

23 A That there were contingencies involved, including him
24 potentially wanting to fill out that application.

25 Q All right. What's the contingency?

Koch - Cross (Dun)

77

1 A Well, if he wanted to invest the 15, he would have to get
2 approved by the Fed and the state.

3 Q So it's not certain it will ever happen, right?

4 A No.

5 Q That's what -- it's true it's not certain it will never
6 happen?

7 A True.

8 Q Thank you.

9 MR. DUNCAN: Could we go to Government's Exhibit 28,
10 please, Sean?

11 BY MR. DUNCAN:

12 Q Mr. Egan talked to you a little bit about this. I have a
13 little different purpose again, so I try not to tread too much
14 ground, but he stole a lot of my thunder. Ma'am, this is an
15 email -- or, I'm sorry, it's a memo, but I guess it probably
16 comes in an email to you?

17 A I assume it did.

18 Q Okay. We don't see the email, but you think it came in
19 an email, right?

20 A Perhaps.

21 Q And it comes from Jeff Hanuscin and he's the CFO at Nova
22 Bank, right?

23 A Right.

24 Q And he's sending you this information and he doesn't tell
25 you where he got the information, does he?

Koch - Cross (Dun)

78

1 (Pause)

2 A No.

3 Q So you don't know where it's coming from, it's just
4 coming from him?

5 A Yes.

6 Q Okay. He then says --

7 MR. DUNCAN: If we could blow up the second
8 paragraph, please?

9 BY MR. DUNCAN:

10 Q He's telling you that this is now -- he's now talking
11 about a contingency on this investor. It says: "The
12 investment is dependent upon regulatory approval of his
13 investment, the Treasury Department approving Nova to sell
14 preferred stock through the TARP program, and the approval of
15 the DVFG transaction." Right?

16 A Yes.

17 Q So if the DVFG transaction is put on there, it's one of
18 the contingencies, right?

19 A Yes.

20 Q And we agree that if a contingency isn't met, the thing
21 doesn't happen, right?

22 MS. BARRY: Objection.

23 THE COURT: Sustained.

24 BY MR. DUNCAN:

25 Q Ma'am, did you understand the DVFG transaction to be a

Koch - Cross (Dun)

79

1 contingency, based on what Mr. Hanuscin told you?

2 A Well, no, I'm not sure.

3 Q Okay.

4 MR. DUNCAN: Go to the next slide.

5 Q "The DVFG transaction would be accompanied by
6 approximately \$2.9 million of additional capital of which
7 we've already received approximately \$2.3 million in escrow
8 and subscription agreements for an additional 700,000."

9 So they've got approximately 300,000 -- I'm sorry,
10 approximately 3 million, someplace around there, to fund the
11 DVFG transaction. That's what he's telling you, right?

12 A Yes.

13 Q When he says it's in escrow, what does that mean?

14 A It typically mean that it's in a bank account. I'm not
15 -- not sure whether it's with another bank or this bank.

16 Q When it's in escrow, it's contingent, right?

17 A Yes.

18 Q And the 700,000 in additional subscriptions, what does
19 that mean by a subscription?

20 A Somebody would agree to potentially invest 700,000.

21 Q So that's another contingency, right?

22 A Yes.

23 Q Okay. I'm sorry, I just drank water. Do you have water
24 -- are you okay?

25 A I'm fine.

Koch - Cross (Dun)

80

1 Q Okay. Sorry. He then --

2 MR. DUNCAN: If you could go down to the next to the
3 last paragraph, Sean, please, that says enclosed for your
4 review.

5 BY MR. DUNCAN:

6 Q Mr. Hanuscin writes to you: "Enclosed for your review
7 are copies of the DVFG's first quarter unaudited financial
8 statements to reflect that they continue to perform well in
9 this economic environment." You got that, right?

10 A Yes.

11 Q Did you review the DVFG financials?

12 A Yes.

13 Q What was your opinion of them?

14 A I don't remember.

15 Q Did you -- did you tell them this isn't going to work?
16 Do you recall that?

17 A No.

18 Q So as far as you know, the DVFG thing was still
19 proceeding, right?

20 A Yes.

21 Q Okay.

22 MR. DUNCAN: If you could go to the next page of
23 this document.

24 BY MR. DUNCAN:

25 Q Yesterday during your testimony you were asked about this

Koch - Cross (Dun)

81

1 letter, right?

2 A Yes.

3 Q Okay.

4 MR. DUNCAN: If we could go -- Sean, let's go to the
5 top. Let's start at the very top, Ballamor Capital
6 Management.

7 Q Do you know who that is?

8 A I had heard the name before.

9 Q Did you know who they were? Back in 2009, did you know
10 who they were?

11 A I -- I knew it was related to Mr. Bekkedam.

12 Q What did you know about it?

13 A Not much.

14 Q Okay.

15 MR. DUNCAN: Go down one line, Sean, for me, please.

16 Q The date of the letter Mr. Bekkedam sent you is June 2nd,
17 right?

18 A Yes.

19 MR. DUNCAN: Next line down, please, Sean.

20 Q He does not send this to you, does he?

21 A No.

22 Q He sends it to Nova Financial Holdings, care of Mr.
23 Hartline, right?

24 A Yes.

25 Q The only way you got this letter is someone from Nova

Koch - Cross (Dun)

82

1 sent it to you, right?

2 A Yes, because I don't see a cc for me.

3 Q You don't have any information that Mr. Bekkedam sent you
4 this letter, do you?

5 A No. The bank sent it.

6 MR. DUNCAN: First line, please, Sean. Dear Brian.
7 Next down, please.

8 Q Mr. Bekkedam writes: "I'd like to confirm that one or
9 more investment advisory clients of Ballamor Capital
10 Management, Inc. are prepared to invest \$15 million into Nova
11 Financial Holdings, Inc. initially and to broaden that
12 investment up to \$40 million in 2009."

13 Now, you see he says more than one client, right?
14 One or more?

15 A One or more.

16 Q So you don't know that's Mr. Levin, Mr. Levin and some
17 other people or -- you just don't know, right?

18 A No.

19 Q Okay. He then says that he's sending it to the Nova --
20 it's going to be invested in the Nova Financial Holdings.
21 That's the holding company that owns Nova Bank, right?

22 A Right.

23 Q And that could go up -- that whole investment could go up
24 to \$40 million. It's a possibility, right?

25 A Right.

Koch - Cross (Dun)

83

1 Q And that would be good for the bank, right?

2 A Yes.

3 MR. DUNCAN: Go to the next slide, please, Sean.

4 Q "Our investors have committed to us that they wish to
5 participate in the Nova investment at the present time." So,
6 again, investors could be one, could be more than one, right?

7 A Yes.

8 Q And then he puts in a provided: "Provided that Nova's
9 current application for TARP funding is approved" --

10 A Yes.

11 Q -- "and the pending DVFG transaction is also approved."
12 So that's two more contingencies, right?

13 A Yes.

14 Q "We feel the proposed transaction will provide additional
15 capital and significant ongoing revenue to make the investment
16 in Nova an anticipated success." The additional capital is
17 the investment of money, right?

18 A Yes.

19 Q And the significant ongoing revenue is the money that
20 Delaware Valley Financial Group's going to bring to the bank,
21 correct?

22 MS. BARRY: Objection.

23 THE COURT: Sustained.

24 BY MR. DUNCAN:

25 Q Do you know, ma'am?

Koch - Cross (Dun)

84

1 A No, I don't.

2 Q Okay.

3 MR. DUNCAN: Go to the next paragraph, please.

4 Q "Because one such investor would own in excess of 10
5 percent of Nova's Financial outstanding shares of common stock
6 after giving effect to the investment in shares to be issued
7 in the DVFG transaction, the investor is willing to go through
8 the process of completing and submitting all documentation
9 required for regulatory approval."

10 So the first thing there, when it says its
11 outstanding shares of common stock, that's Nova common stock,
12 right, or the Nova Financial Holdings common stock, correct?

13 A The holding company.

14 Q Right. And after giving effect to the investment and
15 shares to be issued, that means because when extra shares are
16 issued, the percentage of what a person owns is going to
17 change. So what Mr. Bekkedam's saying there is, we don't know
18 exactly how much he's going to be able to invest because the
19 number of shares are going to expand, right?

20 MS. BARRY: Objection.

21 THE COURT: Sustained.

22 BY MR. DUNCAN:

23 Q Okay. "The investor is willing to go through the process
24 of completing and submitting all documentation required for
25 regulatory approval." That's the change in control

1 application, right?

2 MS. BARRY: Objection.

3 THE COURT: Counsel, let me see you briefly, please.

4 (Sidebar begins)

5 THE COURT: All right. I recognize that a lot of
6 this line of questioning and answers were given without
7 objection when Mr. Egan conducted his cross-examination. And
8 now counsel is objecting. It does not open the door. This
9 witness is not necessarily competent to answer a lot of the
10 questions that you're asking her by reason of these
11 communications. So I'm going to be sustaining the objections.

12 MR. DUNCAN: Thank you, Your Honor. I can ask her
13 -- I think I should be allowed to ask her does she know --
14 does she know what it is. If she says no, she -- that's it.
15 If she says she does, then --

16 MR. ENGLE: Her understanding should be fair game.

17 THE COURT: I understand that. But to the extent
18 that counsel is utilizing someone else's written
19 communications and basically getting her to corroborate what
20 someone else is doing, that's -- you can't do that.

21 MR. DUNCAN: But my question, Your Honor, was only
22 does she know what it is. If she doesn't know what it is,
23 then we're done. If she does know what it is --

24 THE COURT: Even if she knows, a lot of what she's
25 saying is getting into the area of, yeah, I agree with you

Koch - Cross (Dun)

86

1 because that's probably what he's thinking and that's probably
2 right.

3 MR. DUNCAN: Well, I'm not -- that's not what I'm
4 trying to do. I'm actually trying to explore her knowledge,
5 Your Honor. I'm just trying to --

6 THE COURT: As long as it's relevant and probative,
7 I'll allow it.

8 MR. DUNCAN: Okay. That's fine.

9 MR. ENGLE: I think it would be relevant and
10 probative because what we've established is, the FDIC is the
11 primary regulator. The FDIC is the primary regulator that the
12 CPP council relied upon for getting information, information
13 that was being provided by the bank to the primary regulator.
14 The primary regulator's understanding of what that information
15 is and how it plays into the TARP application and the bank's
16 efforts to get TARP certainly seems relevant.

17 THE COURT: It's relevant, but in terms of it only
18 being material if she is not the ultimate decision maker.
19 She's only guessing at -- she's conceding that, yes, this
20 information is important and this information has been
21 communicated. But ultimately for her to put her informata on
22 its approval or disapproval, she's not competent to say that.
23 She's not -- she's not the ultimate person.

24 MR. ENGLE: But she would be competent to say
25 whether or not it affected her mindset with respect to the

Koch - Cross (Dun)

87

1 recommendations she had to make.

2 THE COURT: Absolutely. Absolutely.

3 MR. ENGLE: That was the only --

4 THE COURT: If she's making that recommendation,
5 absolutely.

6 MR. DUNCAN: I hear you, yeah.

7 THE COURT: Okay. Thank you.

8 MR. DUNCAN: Thank you.

9 (Sidebar ends)

10 MR. DUNCAN: May I proceed, Your Honor?

11 THE COURT: You may continue.

12 MR. DUNCAN: Thank you, Your Honor.

13 BY MR. DUNCAN:

14 Q Ma'am, just looking at that last little part there where
15 it says submitting all documents required for regulatory
16 approval, do you know what that means?

17 A Change in control application to the state and the Fed.

18 Q Okay.

19 MR. DUNCAN: Go to the next paragraph, please.

20 Q Mr. -- Mr. Bekkedam's letter continues, and I believe it
21 almost concludes. "It's my further understanding that Nova
22 currently has approximately 2.268 million of escrowed funds
23 and 702,500 in additional subscriptions for other investors
24 that are willing to invest in Nova, only if the pending DVFG
25 transaction is approved and completed." Do you see that?

Koch - Cross (Dun)

88

1 A Yes.

2 Q You understood that as another contingency, correct?

3 A Yes.

4 MR. DUNCAN: Go down to the end, please, Sean. No,
5 just all the way to the end, to Mr. Bekkedam. Right there.

6 Q It says yours truly, B.R. Bekkedam, Barry R. Bekkedam,
7 Chairman and CEO. Do you know whether Mr. Bekkedam signed
8 that?

9 A I assume he did.

10 Q Do you know?

11 A No.

12 Q Okay. Do you know who Larry Rovin is?

13 A No.

14 MR. DUNCAN: If we could go to -- thank you. Thank
15 you, Sean. If we could go to Government's 31.

16 (Pause)

17 BY MR. DUNCAN:

18 Q And, I'm sorry, just one more question about Mr.
19 Bekkedam's letter. You didn't receive any more communications
20 from Mr. Bekkedam, even in -- from other people? Nothing else
21 from Mr. Bekkedam --

22 A No.

23 Q -- ever came to the FDIC, did it?

24 A No, not during the time I was the case manager.

25 Q Through -- was it January 2010, was that when you left?

Koch - Cross (Dun)

89

1 A Yes.

2 Q So in between June 2nd and January 2010, you never heard
3 anything more about Mr. Bekkedam, right?

4 A No.

5 Q Okay. Let's look at this email, please. So this is an
6 email between I guess your boss -- Ms. Howland's your boss?

7 A My supervisor.

8 Q Supervisor. You and then there's sort of a string
9 through there.

10 MR. DUNCAN: So if we could go to the bottom one,
11 please.

12 BY MR. DUNCAN:

13 Q You write to your supervisor: "Hi, Julie. I spoke to
14 Chuck Hunter. He presented Nova's application for TARP to the
15 committee today. They voted to approve with a contingency
16 that the bank raise a minimum of \$15 million in capital.
17 Chuck indicated it still has to go through a review at
18 Treasury, but it's likely to get the nod. Lisa." You wrote
19 that, right?

20 A Yes.

21 Q So that means on June 10th, that was the first date that
22 you had heard about a specific contingency on the bank raise
23 coming from the CPP, right?

24 A I'm not sure if it was the first time.

25 Q Well, the CPP met on June 10th, right?

Koch - Cross (Dun)

90

1 A I don't know when they met.

2 Q You say there --

3 A Oh, yes.

4 Q -- he presented Nova's application --

5 A Yes.

6 Q -- for TARP to the committee today. Today is June 10th,
7 right?

8 A Yes.

9 MR. DUNCAN: Could we go to June -- Exhibit 30,
10 please, Sean.

11 Q And this is the CPP document we seen earlier. You said
12 that you had never seen this, but this -- you'll agree this is
13 June 10th, 2009. That's when they went to the committee,
14 right?

15 A Yes.

16 Q And that's what you're reporting back to Ms. Howland from
17 Mr. Hunter.

18 MR. DUNCAN: Go to the next page, please, Sean. Go
19 about halfway down, second full paragraph. So, I'm sorry, go
20 one more -- I'm sorry, Sean, I got it wrong. Go down to the
21 next line. Nope. Keep on going. Next page, please.

22 BY MR. DUNCAN:

23 Q This is the June 10th recommendation from council, the
24 council recommendation at the back -- at the end, right? It's
25 contingent upon a capital injection of \$15 million, right?

Koch - Cross (Dun)

91

1 A Yes.

2 Q And that's what you're reporting back from Mr. Hunter to
3 Ms. Howland, right?

4 A Yes.

5 Q So that's the first time you knew that the CPP was
6 requiring this contingency, right?

7 A I don't know if --

8 Q They hadn't required it before then, had they? That's
9 when they made their recommendation. There was no requirement
10 before then, right?

11 A No.

12 Q So that's the first day, right?

13 A Yeah, but I think we talked about it.

14 Q Understood. Yeah. You might have been talking about it,
15 but it was not a requirement from any government regulator or
16 any government body until they made a recommendation. That's
17 the first time a recommendation is made, correct?

18 A Right.

19 Q And even then it's not official, right, because it's
20 still got to get approved up the line and then even above that
21 at Treasury, right?

22 A Yes.

23 Q And we know as a matter of fact the \$15 million
24 contingency was never imposed on Nova, correct?

25 A No.

Koch - Cross (Dun)

92

1 MR. EGAN: Go to 75, please, Sean. And if you would
2 blow up the third -- second paragraph down.

3 BY MR. DUNCAN:

4 Q This is the official Treasury letter saying what the
5 express condition for additional equity, it must be obtained
6 prior to the closing (inaudible 11:52:02), correct?

7 A Yes.

8 Q And the number is 10 million, right?

9 A Yes, because five million had already been put in.

10 Q This is the only notification Nova got as a formal
11 communication from the Treasury Department as to how much
12 money they had to raise, correct?

13 A Because they had already raised five --

14 Q I'm not arguing with you, ma'am, at all. But that's the
15 -- but that's what they have to do right now. On August 25th,
16 they've got to get 10 million from August 25th going forward,
17 right?

18 A Yes.

19 Q Okay.

20 MR. DUNCAN: Go back, if you would, to your June
21 10th. That is 31, Sean, please. And the second email from
22 Ms. Howland.

23 BY MR. DUNCAN:

24 Q So your boss doesn't know whether or not Nova is going to
25 want to meet this contingency or what they're going to, right?

Koch - Cross (Dun)

93

1 That's what she tells you?

2 A Right.

3 Q You write back to her.

4 MR. DUNCAN: Third email. Next one up, Sean,
5 please.

6 Q You write back to her. "They'll be fine with it. As I
7 was gathering additional information for Chuck, I spoke to Mr.
8 Hartline about the possibility of Chuck presenting it as a
9 contingency, if it looked like it was going to be declined,
10 and they were okay with that because they're raising capital
11 as we speak." Right?

12 A Yes.

13 Q You knew that they were involved on June 10th in a
14 capital raise, right?

15 A Yes, I knew they had a potential investor.

16 Q But they were also -- there was another capital raise.
17 They were raising money for the Delaware Valley Financial
18 Group, right?

19 A Yes.

20 Q So they were -- they were involved in raising capital?

21 A Yes.

22 Q And they might have another large investor, and we're
23 going to learn later that's probably going to be George Levin,
24 who might invest at least 15 million, right?

25 A Right.

Koch - Cross (Dun)

94

1 Q And that's what you're communicating to your boss, right?

2 A Yes.

3 Q So the first time you knew and your boss knew about the
4 contingency being in place, 15 million coming from the CPP,
5 because Chuck Hunter tells you it came from the CPP and you
6 tell your boss, right, the first day anyone knows that is June
7 10th, right?

8 A Yes.

9 Q Okay.

10 MR. DUNCAN: Go back to Bekkedam's letter, 28.

11 Second page, Sean, please. Top date, please.

12 BY MR. DUNCAN:

13 Q June 2nd, right?

14 A Yes.

15 Q Mr. Bekkedam could not have known on June 2nd that on
16 June 10th the CPP was going to require a \$15 million
17 contingency, could he?

18 MS. BARRY: Objection.

19 THE COURT: Sustained.

20 BY MR. DUNCAN:

21 Q Was the CPP contingency in effect on June 2nd?

22 A Not officially.

23 Q Is there some other way that people would know about
24 whether or not a government action is appropriate and you have
25 to follow it other than whether it's official? Does it have

Koch - Cross (Dun)

95

1 to be official before you have to do it?

2 A Yes, but we had spoken to the bank about it and -- so I
3 don't know what Mr. Bekkedam knew.

4 Q But you do know that the official word didn't come down
5 until June 10th, right?

6 A Right.

7 Q So unless -- unless Mr. Bekkedam's a mind reader, he
8 couldn't know either?

9 MS. BARRY: Objection.

10 THE COURT: Sustained.

11 MR. DUNCAN: Could we now go to -- can we go back to
12 31 for just a moment, please, Sean.

13 BY MR. DUNCAN:

14 Q So there's a lot we've heard about capital --

15 MR. DUNCAN: And if we look at the middle email,
16 Sean.

17 Q This is July 17th --

18 MR. DUNCAN: I'm sorry, I'm looking at the wrong
19 one. I did it again. Sorry, 61A. I said 31, but I meant
20 61A.

21 BY MR. DUNCAN:

22 Q So you're writing to Bill Baxter on July 17th, right?

23 A Yes.

24 Q Okay. So Bill Baxter is who? I'm sorry. I think you
25 might have testified to that. I just forgot.

Koch - Cross (Dun)

96

1 A He's the man in Washington who was kind of leading the --
2 the TARP process.

3 Q Is he the guy whose voicemail we heard earlier?

4 A Yes.

5 Q Okay. So you're advising him -- why are you telling him
6 these things?

7 A Why? Because I passed along any information that I had
8 to them.

9 Q So if you have information, you make sure it gets to the
10 right people, correct?

11 A I give it to Chuck Hunter and then he makes sure.

12 Q And as Mr. Egan asked you, you don't know what Chuck
13 Hunter did, but you expect he did what --

14 A I expect that he did.

15 Q Okay. That's fair. So when you say here that: "I did
16 confirm with the bank that Mr. Levin, the large investor, is
17 still interested in making the investment," what -- why were
18 you needing to confirm it?

19 A I don't remember. They were probably asking questions
20 about it.

21 Q Next line: "He is waiting for the bank to get approval
22 for TARP before he makes his remaining \$10 million
23 investment." Do you see that?

24 A Yes.

25 Q So Mr. Levin's not going to act unless the TARP money is

Koch - Cross (Dun)

97

1 actually granted to Nova, correct?

2 A Yes.

3 Q It's another contingency, right?

4 A Yes.

5 MR. DUNCAN: If I may have the Court's indulgence
6 for just a moment.

7 (Pause)

8 MR. DUNCAN: I'm getting closer. Okay, 62.

9 BY MR. DUNCAN:

10 Q 62 is another email. This one's from Mrs. Hartline to
11 you with a copy to her husband, Mr. Hartline. It's dated July
12 17th, 2009, correct?

13 A Yes.

14 Q Okay. And she asks how are you, and then she talks to
15 you about Mr. Levin and she wants to get you informed as to
16 what Mr. Levin's doing. So she sends you Mr. Levin's
17 subscription agreement, right?

18 A Yes.

19 Q Okay.

20 MR. DUNCAN: Could you go to the next page, Sean.
21 Blow that up for us. The upper right-hand corner especially.
22 Right there would be great.

23 BY MR. DUNCAN:

24 Q So we keep hearing it's 5 million, it's 10 million, it's
25 15 million, it's 13 million, it's 5 or 10 or 15 or 13.

Koch - Cross (Dun)

98

1 MS. BARRY: Objection.

2 Q It's 18 million, isn't it, ma'am?

3 MS. BARRY: Your Honor, objection.

4 Q Isn't it 18 million?

5 THE COURT: Counsel. Counsel.

6 MR. DUNCAN: I'm sorry, Your Honor. I withdraw
7 that. I was a little confused.

8 Q He actually said --

9 MS. BARRY: Objection, Your Honor, --

10 MR. DUNCAN: I was confused.

11 MS. BARRY: -- to the side comments.

12 MR. DUNCAN: I'll stop it, Your Honor.

13 THE COURT: Thank you.

14 MR. DUNCAN: Thank you. My apologies, Ms. Barry.

15 BY MR. DUNCAN:

16 Q The amount was 18 million, right?

17 A Yes.

18 Q So we can agree that no matter what the documents say,
19 it's 18 million that George Levin says he's going to put into
20 Nova Bank, right?

21 A Yes. He had said between 15 and 40 million.

22 Q But this is a subscription agreement.

23 MR. DUNCAN: Blow the whole thing up, Sean, please.
24 And at the bottom. I just want to see the whole -- the whole
25 exhibit. And if you blow up the bottom where Mr. Levin signs

Koch - Cross (Dun)

99

1 it.

2 BY MR. DUNCAN:

3 Q On June 30th, George Levin signed a formal contract
4 saying I will invest \$18 million, correct?

5 A I'm not sure if it's a formal contract. I'm not --

6 Q Take my word for it.

7 A Okay.

8 MS. BARRY: Objection.

9 THE COURT: Sustained.

10 Q Ma'am, do you have any doubt that that's what Mr. Levin
11 was -- said he was going to do?

12 A No.

13 Q Okay. So when we hear the different numbers, we can
14 agree that the real number is 18 million, right?

15 A According to that contract.

16 Q And he puts in the 18 million, whether it's 5 plus 13, or
17 it's 18 million, or it's some portion of 10. He meets the
18 TARP contingency of August 25th, correct?

19 A Yes.

20 Q Do you know what a subscription agreement is?

21 A Yes. I am not sure if it's an official binding contract
22 or not.

23 Q Okay. What's a subscription agreement in the banking
24 world? Why is that significant?

25 A It shows that an investor is willing to invest X amount

Koch - Cross (Dun)

100

1 of dollars.

2 Q So everybody who saw that subscription agreement could
3 reasonably conclude that's what's going to happen, right?

4 A Yes.

5 Q And that's what you expected to have happen, correct?

6 A Yes.

7 MR. DUNCAN: If we could go back to 21 briefly,
8 Sean. Bottom email, please.

9 BY MR. DUNCAN:

10 Q Last line. This is an email from you to Mr. Hunter. You
11 say: "Unfortunately, the money, the \$15 million" -- this is I
12 guess before we got the subscription agreement -- "the \$15
13 million is not in escrow yet." Why is that important, Ms.
14 Koch?

15 A Because that -- that would be the bank having the money
16 available for them to put into capital.

17 Q And if it's in escrow, though, they don't yet have it
18 available for capital because it's just in escrow, right?

19 A Well, they didn't have it in escrow yet.

20 Q But if they had it in escrow, it'd still be -- they'd
21 still have to wait, right?

22 A Legally, I don't know.

23 Q Okay. Yesterday you testified when Mr. Ignall was asking
24 you questions, and I wrote it down, and I tried to quote you
25 exactly, but -- so you tell me if this is what you said. You

Koch - Cross (Dun)

101

1 testified: "And Brian Hartline told me they 'had \$5 million
2 in escrow.'" Did you testify to that yesterday?

3 A Yes, I think.

4 Q So when Brian Hartline told you they had \$5 million in
5 escrow, it's in escrow, right?

6 A Yes.

7 MR. DUNCAN: If we could go to Government's Exhibit
8 19, please. I'm almost done, Your Honor. And if we could
9 blow up the first third of that or so, Sean. Just blow up
10 that part to Lisa and Chuck, please.

11 BY MR. DUNCAN:

12 Q So Chuck's writing to Lisa, "I also need" and he said
13 some things. And the last thing he wants to know is "Whether
14 there's any outside assistance (consulting) being used to help
15 raise the capital." Right?

16 A Right.

17 Q What's he asking you there?

18 A If they have a consultant that's helping them find people
19 to invest in the bank.

20 Q And could you explain that a little bit more? What do
21 you need a consultant for to help you find people to invest in
22 the bank?

23 A You don't always need one, but it helps, --

24 Q And so --

25 A -- because they have contacts.

Koch - Cross (Dun)

102

1 Q -- somebody who works in financial areas, they sometimes
2 help banks raise money, right?

3 A Right.

4 Q And they frequently get paid for their services, right?

5 A Yes.

6 Q Nothing illegal about that, is there?

7 A No.

8 Q Ma'am, you have an accounting degree, correct?

9 A Yes.

10 Q And from Monmouth College, if I remember?

11 A Yes.

12 Q Okay. And that's from what year -- oh, don't answer
13 that, I'm sorry. Let me -- let me withdraw that.

14 A I don't know.

15 Q In your work -- I'm sorry.

16 A That's all right.

17 Q Yeah, it's a long time. When you're working day to day,
18 does that accounting background help you?

19 A Sometimes.

20 Q How does it help you?

21 A Well, a lot of times accounting issues are discussed
22 during bank examinations.

23 Q So if you know a little bit about accounting, that's
24 helpful to you, right?

25 A Yes.

Koch - Cross (Dun)

103

1 Q So ever hear of an accounting principle called EITF85-1?

2 A No.

3 Q But you have an accounting degree, right?

4 A Yes.

5 Q But you haven't heard it. That's okay. The last thing I
6 wanted to ask you --

7 A From years ago. I don't know the numbers by heart.

8 Q I -- I love accountants because they're so much smarter
9 than I am. Ma'am, Anthony Bonomo, have you ever heard his
10 name?

11 A No.

12 Q Have you ever met Anthony Bonomo?

13 A No, I don't think so.

14 Q Anything about Anthony Bonomo in any way influence
15 anything you did with respect to TARP?

16 A Well, it was one of the names on the list of investors.

17 Q So did anything about Anthony Bonomo affect any of the
18 recommendations you made, ma'am?

19 A Well, his -- he was on the list of potential investors.

20 Q That was a list of potential investors you got on
21 December 16th, 2009, correct?

22 A Right.

23 Q That's after basically you're just about to reject Mr.
24 Hartline's bank, right?

25 A Well, it happened shortly after that, yeah.

1 Q Two days, right?

2 A Yes.

3 Q And your bosses had already been sending you emails
4 saying, you know, Lisa, you got to write up that declination
5 memo or the declination recommendation, right?

6 A I think I had one day's notice to do that.

7 Q Yeah. So 16, 17, 18, but then it happens. That's the
8 same list that has Mr. Fellheimer's name on it showing him
9 getting his money out of the Nova line of credit, right?

10 A Yes, but I don't recall seeing that before.

11 Q Do you recall ever seeing Mr. Bonomo's name on that 47-
12 page document?

13 A Yes.

14 Q That one you remember, but you don't remember Mr.
15 Fellheimer's?

16 A Did you see how long that list was?

17 Q Yes, I did, ma'am. It's a lot of information to take,
18 but -- so you did --

19 A Yes.

20 Q -- but you saw Mr. Bonomo, but not Mr. Fellheimer?

21 A I saw his name on the list, yes.

22 Q But you didn't see he was getting the money out of a line
23 of credit?

24 A No.

25 Q Okay.

Koch - Redirect (Bar)

105

1 MR. DUNCAN: Thank you, Your Honor. Thank you to
2 the court. That's all I have.

3 THE COURT: Redirect?

4 MS. BARRY: Yes, Your Honor.

5 (Pause)

6 MS. BARRY: May I proceed, Your Honor?

7 THE COURT: You may proceed.

8 MS. BARRY: Thank you.

9 REDIRECT EXAMINATION

10 BY MS. BARRY:

11 Q Good morning, Ms. Koch.

12 A Good morning.

13 Q When there is an exam conducted at a bank or financial
14 institution, are you looking at a period of time, a defined
15 period of time?

16 A Usually since the last exam occurred.

17 Q Okay. So from the last exam to -- is there like a cutoff
18 date?

19 A Yes. We establish a cutoff date.

20 Q Okay. And does that -- does that date usually correspond
21 with a quarter or it doesn't necessarily?

22 A Most of the times, yes.

23 Q Okay. And when you do an exam, are you looking at every
24 single transaction the bank has done for that time period?

25 A No.

1 Q What does PCA stand for?

2 A Prompt corrective action.

3 Q And when is prompt corrective action taken?

4 A When a bank falls below well capitalized.

5 Q And until 2009, had Nova Bank, to your knowledge, ever
6 fell below well capitalized?

7 A No.

8 Q So the first time they're dealing with prompt corrective
9 action is when their -- their capital is downgraded, is that
10 fair to say?

11 A When they had to amend their March 31st call report.

12 Q The information that you provided to Mr. Hunter, what was
13 your expectation with what he was going to do with it?

14 A Provide it to the TARP council.

15 Q Okay. And when he asked you for information, what was
16 your expectation of why he was asking you for that
17 information?

18 A Because the TARP council would need it.

19 Q Do you know whether or not Nova Bank ever acquired DVFG?

20 A I don't think so. But I think it was the holding company
21 that was supposed to.

22 Q Okay. But as far as you know, you don't think there was
23 an acquisition?

24 A I don't think so.

25 Q Okay. Did Mr. Hartline tell you that the bank met its

Koch - Redirect (Bar)

107

1 contingency regarding TARP?

2 A Yes.

3 MS. BARRY: If we could please take a look at
4 Government's Exhibit 64. And, Your Honor, the Government
5 would move for the admission of Government's Exhibit 64.

6 MR. EGAN: No objection.

7 THE COURT: Granted.

8 MS. BARRY: May it be published, Your Honor?

9 THE COURT: Yes.

10 BY MS. BARRY:

11 Q Now, looking at this first page of Exhibit 64, and this
12 is a -- this is a -- what is it? Is this a letter?

13 A Yes.

14 Q Okay. And who is the letter coming from, what
15 institution?

16 A Nova Bank -- Nova Financial Holdings.

17 Q And this is going to the Federal Reserve Bank?

18 A Yes.

19 Q And do you know whether or not the Federal Reserve Bank
20 regulates Nova Financial Holdings?

21 A Yes.

22 Q And can you please read the first sentence?

23 A "Please be advised that on June 30th, 2009, Mr. Levin
24 invested \$5 million of his proposed \$18 million investment in
25 Nova Financial Holdings, Inc."

Koch - Redirect (Bar)

108

1 Q And if you could scroll down to the bottom, who did this
2 letter come from?

3 A Kim Hartline.

4 Q Okay. Is it Cheryl Kim Hartline?

5 A Yes.

6 Q And she's the corporate secretary?

7 A Yes.

8 Q And I believe it was page 36 of this exhibit.

9 MS. BARRY: If we could go to that. I'm sorry, not
10 36.

11 (Pause)

12 MS. BARRY: Six. Page 6, please.

13 BY MS. BARRY:

14 Q Okay. Looking at page 6, it indicates that Mr. Levin is
15 going to make a total purchase price of 18 million, correct?

16 A Right.

17 Q Half from personal finances, and half from borrowed
18 funds?

19 A Right.

20 Q What is half of 18?

21 A Nine.

22 Q So 9 million from personal finances, and 9 million from
23 borrowed funds?

24 A Yes.

25 Q Is there any indication that the \$5 million investment,

1 monies he's already put in, has been borrowed?

2 A No.

3 Q Is there anything about it being borrowed from the bank?

4 A No.

5 Q Do you know whether or not Mr. Levin was expecting to
6 borrow \$9 million from another bank?

7 MR. EGAN: Objection.

8 THE COURT: Overruled. If she knows.

9 A I didn't know whether -- I expected it would be from
10 another bank.

11 THE COURT: The answer is stricken. That's not the
12 response directly to the question, what she expected. It's do
13 you know. All right.

14 A No, I don't know.

15 MS. BARRY: If we could please take a look at
16 Government's Exhibit 22.

17 BY MS. BARRY:

18 Q And when we get there, I just wanted to ask you, do you
19 -- are you a certified public account or CPA?

20 A No.

21 Q Okay. To become a CPA, do you know what you need to do?

22 A You have to take a four-part test and pass all four.

23 Q Okay. So is that a hard thing to do in terms of
24 accounting?

25 A Yes.

Koch - Redirect (Bar)

110

1 Q It's complicated?

2 A Yes.

3 Q Okay. You have to take a test --

4 MR. EGAN: Objection. Leading.

5 THE COURT: Sustained.

6 BY MS. BARRY:

7 Q You are not a CPA?

8 A No.

9 MS. BARRY: If we could take a look at Government's
10 Exhibit 22.

11 Q And when it came to Government's Exhibit 22, what was the
12 subject of what you were writing about in the subject line?

13 A The TARP application.

14 Q And so Mr. Hartline's response to you is related to what?
15 Questions about the TARP application or something else?

16 A The TARP application.

17 MS. BARRY: If we could please take a look at
18 Government's Exhibit 28.

19 BY MS. BARRY:

20 Q And I -- and this was a -- and what is this? I know
21 you've said it before, but --

22 A It's a memo from Jeff Hanuscin about the TARP application
23 providing me with additional information.

24 Q Okay.

25 MS. BARRY: And if we could take a look at the last

Koch - Redirect (Bar)

111

1 paragraph, please. I'm sorry, I think I might be looking at
2 the wrong exhibit. If we could please take a look at
3 Government's Exhibit 75.

4 BY MS. BARRY:

5 Q And looking at Government's Exhibit 75, what is the date
6 of this letter, please?

7 A August 25th.

8 Q Okay. And is that a date after June 30th?

9 A Yes.

10 Q Is this a letter that was written after Mr. Hartline told
11 you that a \$5 million investment had been made by George
12 Levin?

13 A Yes.

14 MS. BARRY: Can I have a moment, Your Honor?

15 THE COURT: Sure.

16 (Pause)

17 MS. BARRY: The Court's indulgence, Your Honor?

18 THE COURT: Sure.

19 (Pause)

20 BY MS. BARRY:

21 Q Mr. Duncan asked you about -- whether you knew anything
22 about Anthony Bonomo. Was that information forwarded to you
23 when both Mr. Hartline and Mr. Hanuscin told you that Nova had
24 met the contingency?

25 A I'm not sure when it was forwarded to me, but I know it

Koch - Redirect (Bar)

112

1 was to meet additional information.

2 Q Okay. Was that related to trying to meet the
3 contingency?

4 MR. EGAN: Objection.

5 MS. BARRY: I'll look for these. I didn't want to
6 take the Court's time.

7 THE COURT: All right.

8 MS. BARRY: If I could just have a moment to look
9 for --

10 THE COURT: Go ahead.

11 (Pause)

12 MR. EGAN: Your Honor, may I speak to counsel --

13 THE COURT: Go ahead.

14 MR. EGAN: -- to see if we can resolve it?

15 THE COURT: Sure.

16 (Pause)

17 THE COURT: Would you like to stand up and stretch
18 your legs for a moment?

19 (Pause)

20 THE COURT: I switched chairs myself.

21 (Laughter)

22 THE COURT: Counsel, you may continue.

23 MS. BARRY: Thank you for the Court and the jury's
24 indulgence.

25 BY MS. BARRY:

Koch - Redirect (Bar)

113

1 Q I'd like to show you what's been marked as Government's
2 Exhibit 140.

3 MS. BARRY: And if we could publish that. It's been
4 admitted and previously published.

5 Q And looking at Government's Exhibit 40, is this an email
6 from -- who is this an email from?

7 A Brian Hartline.

8 Q Okay. And what is the date?

9 A December 15th, 2009.

10 Q Okay. And is someone copied on this email?

11 A Jeff Hanuscin.

12 Q And looking at the first sentence of that second
13 paragraph, what does it say?

14 MS. BARRY: And if we could highlight it?

15 A "Nova has met the contingency requirement by raising over
16 \$10 million of capital."

17 Q Okay. Just -- just that section. And then in those --
18 in that email, does an attachment follow?

19 A Yes.

20 Q Okay. And if we could turn to the next page, please.
21 And what is the date of this letter, which is an attachment to
22 the email?

23 A December 15th, 2009.

24 Q Okay. And, again, what is the first sentence?

25 A "As you are aware, Nova Financial Holdings, Inc. has

Koch - Recross (Ega)

114

1 completed raising over \$10 million of common -- common equity,
2 thus achieving the Treasury Department's contingency for Nova
3 to receive its CPP funding."

4 Q Okay. And if we take a look at the second to last page,
5 at the bottom, Anthony Bonomo, \$2.5 million, correct? Is that
6 on -- is that on the attachment that was sent to you on
7 December 15th, --

8 A Correct.

9 Q -- 2009? Okay.

10 MS. BARRY: May I have a moment, Your Honor?

11 THE COURT: Yes.

12 (Pause)

13 BY MS. BARRY:

14 Q Now, when it came to Mr. Bonomo in the information that
15 was provided to you, were you given any related to the source
16 of Mr. -- the funding for Mr. Bonomo?

17 A No.

18 Q Okay.

19 MS. BARRY: And if we could go to the next page,
20 please.

21 Q And if you see Charles Gallab?

22 A Yes.

23 Q For 500,000?

24 A Yes.

25 Q Did Nova Bank -- anyone at Nova Bank provide you with any

Koch - Recross (Ega)

115

1 information on the source of Mr. Gallab's funding --

2 A No.

3 Q -- of buying stock?

4 A No.

5 MS. BARRY: No further questions. Thank you.

6 MR. EGAN: Very briefly, Your Honor.

7 THE COURT: Yes, sir.

8 RECROSS-EXAMINATION

9 BY MR. EGAN:

10 Q You were -- you were asked on redirect about
11 examinations, and basically I think the question was, you
12 essentially are looking at a period that has a defined end,
13 correct?

14 A Well, sometimes we take in subsequent events into
15 consideration.

16 Q Exactly. That was my next question. Once you're on
17 site, you ask for more current data, don't you?

18 A Typically.

19 Q So it's not just that as of date or that last date of the
20 prior quarter that you're interested in, you're also
21 interested in more recent data?

22 A Yes.

23 Q And in terms of what you actually examine when you go in,
24 the bank doesn't pick that, right?

25 A No.

Koch - Recross (Dun)

116

1 Q You pick it?

2 A Yes.

3 Q Now, during this entire period of time, and what I'm
4 talking about, all of 2009, when all of this is going on, Nova
5 is never in -- in anywhere near failing, right?

6 A No.

7 Q And, in fact, they were never threatened with being taken
8 over during that period of time?

9 A No.

10 Q Then the last thing I want to ask you about is G-145.

11 MR. EGAN: Which if we could have up just the first
12 page.

13 Q And that was the last thing that Ms. Barry asked you
14 about, and that is where the information about Mr. Fellheimer
15 is, as I pointed out to you earlier, remember?

16 A Yes.

17 Q And in the email from Mr. Hanuscin it says: "Here is
18 most of the support for the cash received. The remainder will
19 follow shortly." Correct?

20 A Yes.

21 Q And that was on December 16th?

22 A Yes.

23 Q And that was after you had already heard that this was
24 going to be squashed, correct?

25 A I don't know.

Koch - Recross (Dun)

117

1 Q Well, we'll let the -- the jury's recollection.

2 MR. EGAN: Thank you, Your Honor.

3 MR. DUNCAN: Very briefly, Your Honor.

4 THE COURT: Yes, sir.

5 MR. DUNCAN: Can we have that back up again? 145,
6 please.

7 RECROSS-EXAMINATION

8 BY MR. DUNCAN:

9 Q Do you remember when you got this, ma'am?

10 A Well, it's dated December 16th.

11 Q And how much after were you writing your denial
12 recommendation?

13 A A couple days. I'm not sure how many.

14 Q Denial was on the 18th, right?

15 A I'm not sure.

16 Q Didn't we establish that earlier with -- okay. The
17 jury's recollection on that. So when you got this information
18 with this 47 pages of attachments, what did you do with it?

19 A I had sent it to Chuck.

20 Q Did you review it yourself?

21 A Yes.

22 Q How much time did you spend with it?

23 A I don't remember.

24 Q 10 minutes, an hour, two hours?

25 A Well, it's a lot of information.

Colloquy

118

1 Q How much time did you spend with it?

2 A I don't know.

3 Q Okay.

4 MR. DUNCAN: Thank you, Your Honor. No further
5 questions.

6 MS. BARRY: Nothing further, Your Honor. Thank you.

7 THE COURT: Thank you very much. You may step down.
8 Watch your step, please.

9 (Pause)

10 THE COURT: All right. We're going to take our
11 luncheon recess. We will recess until 1:45 this afternoon.
12 1:45 this afternoon. Thank you.

13 THE CLERK: All rise.

14 (Jury out at 12:25 p.m.)

15 THE COURT: All right. We're in recess.

16 MR. IGNALL: Your Honor, there are two issues with
17 respect to the next witness.

18 THE COURT: Those in the audience may be seated, or
19 you are excused. Either one.

20 MR. IGNALL: Pardon?

21 THE COURT: I'm just telling those in the audience
22 they can leave, if they wish. Yes, sir.

23 MR. IGNALL: There are two issues, and if the Court
24 wouldn't mind, I'd like to resolve them now so that I can talk
25 to the witness over the lunch hour to make sure we don't --

Colloquy

119

1 THE COURT: Sure. Sure.

2 MR. IGNALL: The two issues involve -- the next
3 witness is going to be Mr. Frank Preve, who is someone who
4 worked for Mr. Levin. Mr. Preve has two prior convictions.
5 Issue one revolves around his 1985 conviction.

6 Even though the conviction is, you know, now 30
7 years old, we are not going to fight against the defense
8 cross-examining him on it under Rule 609. But I believe that
9 cross-examination should be limited to the fact of the
10 conviction, what it was for, and what his sentence was, as
11 well as the date of the conviction. I understand the defense
12 would like to go into more than that, and I don't think that's
13 appropriate.

14 THE COURT: In a 609 jury instruction in terms of
15 how they are to weigh it and consider it, does it allow
16 anything else to be admitted?

17 MR. IGNALL: Rule 609 does not. And as I believe we
18 outlined in our trial memorandum, if someone has been
19 convicted, I don't believe that Rule 609(b) allows examination
20 as to a prior instance of untruthfulness that later resulted
21 in a conviction.

22 MR. SCHWARTZ: May I, Your Honor?

23 THE COURT: Yes, sir.

24 MR. SCHWARTZ: Joel Schwartz for Mr. Bekkedam. It's
25 our intention, with the Court's permission, to introduce

Colloquy

120

1 evidence under Rule 608 as well.

2 What happened in 1985 is that Mr. Preve was the
3 president of a bank and he -- he committed a series of frauds,
4 a series of clearly fraudulent acts. And the -- the
5 Government was good enough after -- in response to our
6 request, to provide the PSIR from his current conviction,
7 which gave great detail about what happened in 1984. He
8 committed \$3 million worth of fraud, defrauding three sets of
9 people essentially, and he pled guilty to the fraud of one
10 person regarding one entity. So we would like to ask
11 questions with regard to each of those three, and we think
12 it's admissible under 608.

13 If it would assist the Court, we would be happy to
14 proffer the outline of our 609 cross-examination for the Court
15 to review ex parte to determine if we are overstepping our
16 Rule 608 bounds or not and instruct us. I have it here
17 prepared and I can give the corresponding documentation, which
18 of course we wouldn't introduce because that would be
19 extraneous evidence, but it would be -- it's the basis -- it's
20 our good faith for asking those questions.

21 THE COURT: You have it with you now?

22 MR. SCHWARTZ: I have it right here, sir.

23 THE COURT: You can hand it up.

24 MR. SCHWARTZ: Your Honor can mark this as the Court
25 sees fit. I'm going to hand up four documents. One is a

1 document headed 1984 conviction, and that's with regard to
2 608(b) and 609 questioning. Just to make sure we cover
3 everything, here is the 608(b) and 609 questioning from the
4 2015 conviction as well. That's the second document. And
5 then our good faith basis for each of those is the -- I'm
6 sorry, one more document. The **agreed motion (ck. 12:29:36)** to
7 extend self-surrender, the sentencing proceedings transcript
8 for Mr. Preve, and the fifth document, Your Honor, is the
9 offense conduct report. Everything in the outline we're
10 handing to the Court marks the pages so the Court won't have
11 to read all of the documents to get where we're going.

12 THE COURT: All right. Just give me a moment,
13 please.

14 (Pause)

15 THE COURT: Counsel, let me just fully understand
16 what you're proffering here. Let's go first to Rule 608, a
17 witness. 608(a) reads as follows: Reputation or opinion
18 evidence: A witness' credibility may be attacked or supported
19 by testimony about the witness' reputation for having a
20 character for truthfulness or untruthfulness, or by testimony
21 in the form of an opinion about that character, but evidence
22 of truthful character is admissible only after the witness'
23 character for truthfulness has been attacked.

24 b) Specific instances of conduct: Except for a
25 criminal conviction under 609, extrinsic evidence is not

1 admissible to prove specific instances of a witness' conduct
2 in order to attack or support the witness' character for
3 truthfulness, but the court may, on cross-examination, allow
4 them to be inquired into if they are probative of the
5 character for truthfulness or untruthfulness of the witness.
6 The remainder is inapplicable.

7 Now, of equal importance, the Court points to the
8 notes of the Advisory Committee on Proposed Rules. In
9 pertinent part, it reads as follows: Subdivision (a): In
10 Rule 404(a), the general position is taken that character
11 evidence is not admissible for the purpose of proving that the
12 person acted in conformity therewith, subject however to
13 several exceptions, one of which is character evidence of a
14 witness as bearing upon his credibility. The present rule
15 develops that exception. In accordance with the bulk of
16 judicial authority, the inquiry is strictly limited to
17 character for veracity, rather than allowing evidence as to
18 character generally. The result is to sharpen relevancy, to
19 reduce surprise, waste of time, and confusion, and to make the
20 lot of the witness somewhat less attractive. And that cite is
21 from McCormick, Section 44.

22 The use of opinion and character evidence as means
23 of proving the character of witnesses is consistent with Rule
24 405(a), while the modern practice has purported to exclude
25 opinion witnesses who testify to reputation, seen in fact

Colloquy

123

1 often to be giving their opinions disguised somewhat
2 misleading as reputation.

3 Now, I'll stop there, and this is my concern. To go
4 beyond the fact that someone was convicted of these offenses,
5 and they certainly can be named, to go to other underlying
6 information about what they did, the extent of plea agreements
7 and things like that, this isn't someone who's testifying in
8 exchange for something. This man's sentence has already been
9 imposed. This was 30-some years ago, you indicated.

10 MR. SCHWARTZ: He -- his sentence was 30 years ago.
11 He definitely is testifying in exchange for something today,
12 sir. He is testifying to -- to keep himself out of prison and
13 hopefully stay out of prison based on his current cooperation
14 agreement with the Government. But -- but what happened 30
15 years ago --

16 THE COURT: Accepting that that's true, that has --
17 that has -- that allows for a different kind of inquiry of the
18 witness in terms of bias.

19 MR. SCHWARTZ: That's correct, and that's the second
20 document I handed Your Honor about the 2015 conviction. The
21 reason we wish to inquire under Rule 608(b) with regard to the
22 1985 conviction is that the evidence that Mr. Preve provided
23 to the Government gives very short shrift as to what happened
24 in 1985, and we would like to adduce under Rule 609 what he
25 pled guilty to, and then under Rule 608, not that he got -- so

1 much that he got a deal, but that he committed three very
2 fraudulent acts as the president of a bank.

3 His guilty plea reflects only one set of acts. He
4 stole \$850,000. He defrauded the bank out of \$850,000 by
5 approving a loan -- by faking approval of a loan for his
6 brother. That's the thing he pled guilty for and was
7 convicted of.

8 The PSIR, which the Government provided us, showed
9 that he did two other very large acts of theft, one involving
10 \$610,000 and one involving \$1.6 million. He stole \$2.3
11 million from other bank investors. That's the 608(b)
12 evidence. That's the other bad acts.

13 Respectfully, Your Honor, we're going to assert that
14 this man is untruthful. He is untruthful in his business
15 conduct. That is completely relevant to our cross-examination
16 in impugning his credibility about what he did when he was
17 acting as the agent for Mr. Levin.

18 He was -- this man's history is, he worked at a bank
19 from 1970 to 1983. George Levin was a client of his. Took a
20 little break because he committed a bunch of crimes and had to
21 deal with that. In 1985, he comes back, can't get a job at a
22 bank anymore, so he goes to work for Mr. Levin full time to
23 2010 where, lo and behold, he gets convicted of another fraud
24 crime. That's his history. That's completely relevant to
25 what the jury should know about the truthfulness of what comes

1 out of this gentleman's mouth.

2 In order to give the full flavor of that, to say,
3 oh, you pled guilty to false issuance of a document and got
4 five years probation in 1985, would completely obliterate the
5 fact that he was the president of a bank when he did that, and
6 that he actually committed three acts of larceny involving --
7 in the position of a bank president, and then kind of
8 continued on a career of dishonesty, all of which was tied up
9 with Mr. Levin. All of which -- and it's my belief based on
10 proffers by the Government and by discovery from the
11 Government, they're essentially offering him as the cog in the
12 wheel of these transactions between Mr. Levin on one end, Mr.
13 Bekkedam on the other, and the third corner Nova Bank. If we
14 can cut off one of the legs of that three -- three-legged
15 stool, that helps our case.

16 THE COURT: Let me hear from the Government on this,
17 please. Thank you.

18 MR. IGNALL: We're just talking about the 1985
19 conviction here right now.

20 THE COURT: Yes.

21 MR. IGNALL: We could, I think, have moved to
22 exclude it altogether. It's a --

23 THE COURT: I think so, too.

24 MR. IGNALL: It's a 30-year-old conviction. It's
25 not clear to me how the probative value necessarily, because

Colloquy

126

1 of its age, outweighs the potential for confusion of the jury
2 and unfair prejudice. But we decided not to do that. We're
3 willing to let the jury understand the full background of Mr.
4 Preve. But I have not heard anything from counsel as to why
5 conduct, and even if it's relevant conduct that underlies a
6 prior conviction, is appropriate under Rule 608(b) or why that
7 wouldn't be barred by Rule 403 as confusing the issues or
8 being an undue waste of time.

9 My understanding is Rule 609 is clear that the
10 defense may use extrinsic evidence to prove a prior
11 conviction, unlike under 608(b). But when there is a prior
12 conviction, the defense is limited to the fact of the
13 conviction, what it's for, when it was, and what the sentence
14 was. I haven't heard anything that goes beyond that, other
15 than they would like to make Mr. Preve look like he's a bad
16 guy, which I understand why they want to do that. It's not
17 clear to me how Rule 609 and Rule 608(b) allow that.

18 THE COURT: I don't see it either, counsel.

19 MR. SCHWARTZ: 608 allows it, Your Honor. It's to
20 go to his reputation -- or, I'm sorry, if it's probative of
21 his truthfulness. This man has a history of being a liar.

22 THE COURT: So where would you stop?

23 MR. SCHWARTZ: I would stop where -- I would ask him
24 things where I didn't have good faith evidence; that the FBI,
25 vetted by the United States Probation Office, concluded that

Colloquy

127

1 he committed three acts of theft in the position of a bank
2 officer. He pled guilty to one of them. He was sentenced to
3 five years probation for pleading guilty to one of them and
4 ordered to pay \$850,000 in restitution. He paid \$40,000 of
5 that. The man is -- he's a dishonest man.

6 THE COURT: What if he denies -- what if he starts
7 to deny some of these things?

8 MR. SCHWARTZ: If he denies it, I cannot introduce
9 extrinsic evidence.

10 THE COURT: Correct. You're stuck.

11 MR. SCHWARTZ: I think that's an ethical issue and
12 I'm stuck. But I get to ask him that and the jury gets to
13 judge him. That -- that there's a limit, and there's been a
14 lot of literature about whether there should be a limit, on
15 what I can do with 608(b) evidence, --

16 THE COURT: I --

17 MR. SCHWARTZ: -- but it does say I get to ask
18 him --

19 THE COURT: I'm the trial judge. I have to do what
20 they tell me to do.

21 MR. SCHWARTZ: And what the -- respectfully, I
22 believe what the rule instructs the district -- United States
23 District Court to do is to allow me to ask the question of --
24 of acts, of specific incidents. We have a very good faith
25 basis for it. The Government provided the information to us.

Colloquy

128

1 It was in a presentence investigation report that talked about
2 what the FBI found out and was vetted by the U.S. Probation
3 Office. That's as good --

4 THE COURT: All right. Now, counsel, --

5 MR. SCHWARTZ: -- that's gold information.

6 THE COURT: The best that I can do is read this
7 while I eat my soup.

8 (Laughter)

9 THE COURT: All right?

10 MR. SCHWARTZ: That's fine. And if you spill soup
11 on it, I got no problem with it.

12 THE COURT: Thank you.

13 MR. IGNALL: There's a second issue, Your Honor, --

14 THE COURT: Yes, sir.

15 MR. IGNALL: -- that goes to his more recent
16 conviction. And we obviously have no objection to the defense
17 inquiring about the fact of that conviction. We also, and
18 I'll introduce it on direct examination, have no objection to
19 impeachment for potential bias because Mr. Preve had a
20 cooperation agreement with the Southern District of Florida.
21 Although he's already been sentenced, he will testify that he
22 is hoping that he will get a Rule 35 as a result of this. So
23 I think that's totally permissible for bias.

24 THE COURT: And who will explain Rule 35?

25 MR. IGNALL: Well, I'm not going to say Rule 35, but

Colloquy

129

1 just -- what I will ask him is --

2 THE COURT: I'm talking obviously to the jury.

3 MR. IGNALL: Right.

4 THE COURT: I'm talking about obviously to the jury
5 in terms of --

6 MR. IGNALL: Well, I think we would just have to
7 craft a slight change to the standard cooperation agreement,
8 that he's hoping for leniency --

9 THE COURT: All right.

10 MR. IGNALL: -- in some way. I don't think that
11 should be too much of a challenge.

12 THE COURT: Okay.

13 MR. IGNALL: Our concern here is because the Court
14 has instructed the Government not to introduce any evidence of
15 the Rothstein investment being a Ponzi scheme or a fraud, if
16 we go into any details of Mr. Preve's conduct, and I think a
17 lot of it is going to be relevant to understanding his
18 background, how he knows about Mr. Levin and Mr. Bekkedam, we
19 run the risk of getting into he pleaded guilty to a crime that
20 was connected to the Rothstein Ponzi scheme. So if we go into
21 the details of what he did and what he was convicted of, I'm
22 not sure how to, you know, sanitize the Rothstein Ponzi scheme
23 from that.

24 MR. SCHWARTZ: Thank you, Your Honor. Joel Schwartz
25 again. I appreciate the Government writing my cross-

Colloquy

130

1 examination for me, but what we want to say, Your Honor, is
2 that this man is cooperating and he continues to cooperate.
3 We proffered the proposed cross-examination to Your Honor to
4 review because we knew that it was getting very close to the
5 Rothstein/Ponzi issue.

6 Invariably, during the course of this gentleman's
7 direct examination, the Rothstein issue is going to come up
8 and we will follow the phraseology that the Government uses to
9 refer to the Rothstein or Banyon deals. But there's nothing
10 in there that says you were convicted of the Rothstein Ponzi
11 scheme. It talks about when he was convicted and -- and that
12 he committed fraud and what the -- the dates of the acts of
13 his fraud were. And I proffered the testimony -- or the
14 questioning, and if Your Honor wants to red line it, of course
15 we'll follow the Court's instructions.

16 THE COURT: All right. Let me jump back one second
17 to the 19 -- is it '85 conviction?

18 MR. SCHWARTZ: That's correct, sir.

19 THE COURT: In all of this compendium that you've
20 submitted to the Court, is there a Third Circuit Court of
21 Appeals case on this issue of allowing more than the
22 conviction, the date, and the place?

23 MR. SCHWARTZ: It's just Rule 608, Your Honor. It's
24 a -- it's a -- it's an existing fact that we have a good faith
25 belief in, that we know. All those things I gave Your Honor

1 was to show Your Honor what our good faith basis is. We are
2 not going to cross-examine or stand up here and read from a
3 document acting like we know something to make sure he
4 testifies accurately.

5 THE COURT: But, nevertheless, I'm simply asking, is
6 there Third Circuit guidance on this issue in terms of going
7 beyond the conviction, the date, and the place?

8 MR. SCHWARTZ: I'd have to look it -- look it up.
9 Mr. Ignall approached us about this this morning before trial.
10 What we're trying -- the going beyond the date of conviction,
11 that's Rule 609. The going beyond is what's covered by Rule
12 608(b). That's our -- that's our authority for going beyond.

13 THE COURT: By two additional incidents.

14 MR. SCHWARTZ: Yes.

15 THE COURT: That did or did not result in
16 convictions?

17 MR. SCHWARTZ: Did -- well, it did not result in a
18 conviction. The FBI conducted an investigation of his conduct
19 at the bank. They found out that he did three things wrong.
20 He pled guilty to one of them. Don't know if he got a deal;
21 don't know if it got knocked out. But there are clear
22 findings in the PSIR, which is handed up to Your Honor,
23 enunciating exactly what he did. And I tried to, in kind of
24 one or two sentences, get the -- the sine qua non, the
25 essential piece of each one.

Colloquy

132

1 I mean, I said, well, you were convicted for a crime
2 involving issuing a false loan document to a company that your
3 brother was a principal of; I know you hid that information.
4 The FBI also investigated you for two other acts, one was
5 ripping off a gentleman named Mr. Patrecca (phonetic), I
6 believe, for \$610,000. And the second was for misapplication
7 of funds of a gentleman named Mr. Vetroni (phonetic), I
8 believe, for \$1.6 million.

9 There's three or four pages of information and I
10 tried to just extract something that characterized what he did
11 without making this a long story that would distract the jury.
12 It's frankly, Mr. Preve, you were a bank manager; you abused
13 your position; you committed three acts of theft against your
14 -- against your customers; caused the bank to lose 2.3 to \$3
15 million, that's an FDIC bank, and you were ordered to pay back
16 \$850,000 and you paid back \$40,000 of it. That's in a
17 nutshell the cross-examination that covers the 608 part. And
18 the 609 part is, for those acts, you pled guilty to the
19 (inaudible 12:47:38), the first of those three crimes. Here
20 are the two counts, both of them were felonies, but instead of
21 going to jail, you got five years probation concurrent on each
22 and ordered to pay 850 grand and, oh, by the way, you never
23 paid back most of the 850 grand. That's in a nutshell the
24 whole cross of him with regard to the 1985 conviction.

25 THE COURT: And other acts.

Colloquy

133

1 MR. SCHWARTZ: And other acts, that's correct. The
2 1985 -- the events that led to the charging in 1985.

3 THE COURT: All right.

4 MR. SCHWARTZ: And that's laid out word for word,
5 and of course your edits are the ones that will govern.

6 THE COURT: All right. I'll hold it under
7 advisement.

8 MR. SCHWARTZ: Thank you.

9 THE COURT: And, again, there's no Third Circuit
10 case on the issue, correct?

11 MR. SCHWARTZ: I can go look for it right now.

12 Mr. --

13 THE COURT: I strongly suggest you do.

14 MR. SCHWARTZ: Okay. Thanks.

15 THE COURT: All right. Mr. Ignall?

16 MR. IGNALL: And, Your Honor, we have it -- it's on
17 page 21 of the Government's trial memorandum that we filed in
18 October. There's an unpublished Third Circuit case that cites
19 a hornbook about permissible questioning typically limited to
20 the number of convictions and the nature, time, and date of
21 each. I'm not aware of any authority that allows 608(b)
22 questioning. And what I think Mr. Schwartz has said is the
23 conduct he wants to inquire about was at most relevant conduct
24 underlying the conviction and what he pleaded guilty to and
25 what he was sentenced for, because the source of this is --

Colloquy

134

1 THE COURT: Which -- which presumably was not raised
2 at that time. I don't know whether it was or not.

3 MR. IGNALL: I don't know why or he -- why he was --
4 you know, pleaded guilty to one count versus another. It
5 certainly appears to me from reading the presentence report
6 that this looks to be included as relevant conduct because
7 it's included in the offense conduct for this prior
8 conviction.

9 THE COURT: All right. Anything further? You'll
10 get me the case?

11 MR. SCHWARTZ: While you eat soup, I'll eat salad
12 and we'll see where we get to.

13 THE COURT: All right. Fair enough.

14 MR. IGNALL: All right. Thank you, Your Honor.

15 THE COURT: Thank you all.

16 (Recess at 12:49 p.m. to 2:13 p.m.)

17 (Transcriber change)

18 **(AFTERNOON SESSION BEGINS AT 2:14:21 P.M.)**

19 THE COURT: All right. Counsel, let's proceed with
20 the motion regarding the testimony of Mr. Preve.

21 MR. SCHWARTZ: Who do you want to hear from first,
22 Your Honor?

23 UNIDENTIFIED SPEAKER: Yeah.

24 THE COURT: You're going to hear from me.

25 MR. SCHWARTZ: Okay. I got you. There we go.

1 THE COURT: All right. Now, I've reviewed what
2 you've submitted, I've read the, I think, pertinent case law.
3 The most recent one that Mr. Schwartz submitted, I read that
4 too, involving a defendant, however, as opposed to involving a
5 witness. And, I think that there is a distinction wherein a
6 defendant is even entitled to more protection considering 403
7 than a witness, but nevertheless 403 still limits the
8 presentation of evidence when it is confusing and otherwise
9 irrelevant in addition to other factors.

10 Now, my concern is this. Counsel submitted a
11 proposal of what counsel -- or at least an outline of what
12 counsel was looking at in terms of arguing. Now, I can, with
13 specificity tell you what I would not allow from this or I
14 will not do that, it's your prerogative, but I will, in other
15 words, as an alternative tell you what my decision is
16 regarding the two convictions.

17 First of all, the conviction that is the most recent
18 of the two, it's open, it's fair game for everything that you
19 can utilize to impeach his testimony. The more problematic is
20 the 1985 conviction. You will be allowed to impeach by the
21 nature of the conviction, the date of the conviction. And, to
22 the extent the nature would include the basic facts of that
23 conviction, I will allow it. I will not allow, however, to go
24 beyond the basic facts of the conviction to what the FBI
25 learned and what they did or even the other matters involved,

1 because it was 1985. It's too remote in time in my opinion to
2 satisfy 403 and the balancing test.

3 Any questions?

4 MR. SCHWARTZ: Just so I make sure I don't make a
5 mistake.

6 THE COURT: Yes, sir.

7 MR. SCHWARTZ: So, the facts connected, just
8 accepting my posit that there were three events --

9 THE COURT: Excuse me. He had one conviction.

10 MR. SCHWARTZ: Right. But the conviction -- so the
11 acts surrounding --

12 THE COURT: That conviction.

13 MR. SCHWARTZ: So those facts, the \$850,000 issue?

14 THE COURT: If it was \$850,000 that was a loss, you
15 can bring that out. The crime, specifically, by statute if
16 you choose to do that. And, the 850 would be the loss
17 incurred to the victim at the date of that conviction.

18 And, then you have the most recent conviction to do
19 what you will.

20 MR. SCHWARTZ: Just so I'm clear, Your Honor, I
21 don't want to run afoul of Your Honor's order. The -- there
22 were three separate events. I understand events number two
23 and events number three connected to 1985 are out?

24 THE COURT: Yes, sir.

25 MR. SCHWARTZ: With regard to the 608 issue, not the

1 609 issue, the 608 issue, may I ask the questions I outlined
2 about the effect of event number one in 1985?

3 THE COURT: Let me hear from the Government. I
4 don't see why you could or how you could.

5 MR. IGNALL: No. I think under 609 it is clear that
6 if there was a conviction there could be extrinsic evidence
7 but the cross-examination is limited to that.

8 And, I just -- to clarify for the record, I spoke to
9 Mr. Preve after we had our initial discussion about this, and
10 my understanding from Mr. Preve is that the first count he
11 pleaded guilty to included the conduct that is outlined for
12 all three. Although, I will say that if there were an inquiry
13 he would say that although that was part of the conviction,
14 he's not acknowledging that he did those but he did plead to
15 it. But I don't think that it's appropriate to get into
16 anything other than he was convicted of this.

17 THE COURT: And, you can enumerate the amount of
18 loss in its totality if you wish, but to go into the
19 individual sub facts, I won't allow it.

20 MR. SCHWARTZ: All right.

21 THE COURT: All right. You have an exception.

22 MR. IGNALL: There is one other issue. I believe
23 Mr. Schwartz said he wanted to inquire about the restitution
24 that Preve didn't pay. (A) I'm not sure how that goes to
25 truthfulness or untruthfulness, and (B) I'll just let the

1 Court and counsel know I've spoken to Mr. Preve and he will
2 say that he did pay it and that there's simply not a rec --
3 and indeed, the presentence investigation report shows that
4 there's no records left 20 years later to say one way or the
5 other about that.

6 So, I am just -- but I don't -- even if he had not
7 paid it, I don't know how that goes to truthfulness.

8 MR. SCHWARTZ: Respectfully, Your Honor, I would
9 like another exception and I don't believe the prosecutor
10 should have spoken to the witness about this.

11 THE COURT: I didn't hear you.

12 MR. SCHWARTZ: I don't believe the prosecutor should
13 have spoken to the witness about this. And, I'm sorry --

14 THE COURT: Well, no, no, no, no, we're definitely
15 not going to go there, counsel.

16 MR. SCHWARTZ: Well, Your Honor --

17 THE COURT: No, I'm not going to do that.

18 MR. SCHWARTZ: All right.

19 THE COURT: All right. The issue before the Court
20 the Court has ruled upon. Is there anything further?

21 MR. SCHWARTZ: No, Your Honor.

22 MR. IGNALL: Oh, I'm sorry, one more thing.

23 THE COURT: Yes, sir.

24 MR. IGNALL: I think there is a zero percent chance
25 that we're going to be done with Mr. Preve today. I might not

1 even be done with my direct. He's going to have to come back
2 Monday, regardless. He lives in Florida and he has a 6 p.m.
3 flight, so is it possible we could agree to adjourn around
4 4:15 if there's a logical stopping point so Agent Lyons can
5 take him to the airport?

6 THE COURT: Sure.

7 MR. IGNALL: And, I've spoken to counsel, they have
8 no objection to that.

9 MR. SCHWARTZ: We have no objection, Your Honor.

10 THE COURT: Now, is that going to be included in
11 your cross-examination --

12 UNIDENTIFIED SPEAKER: Everything from Mr. Schwartz,
13 Your Honor.

14 THE COURT: -- that he's getting special favors,
15 special treatment. Along that line, can I speak with counsel
16 ex parte, please, since he gave me this to be seen in camera,
17 Mr. Schwartz?

18 (Sidebar conference)

19 MR. SCHWARTZ: Here are the bankruptcy rules, Your
20 Honor.

21 THE COURT: That's fine. Now, the reason why I'm
22 doing this ex parte is because I'm not going to publically
23 talk about this. All right, that's out. There's too much of
24 a potential inference that he's going to be in South
25 Philadelphia eating dinner. He's down there with the mob.

Colloquy/Motion

140

1 UNIDENTIFIED COUNSEL: That's a fair point.

2 THE COURT: Okay.

3 UNIDENTIFIED COUNSEL: North Philly.

4 UNIDENTIFIED COUNSEL: Barbeque.

5 THE COURT: Thank you.

6 UNIDENTIFIED COUNSEL: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 (Sidebar ends)

9 THE COURT: All right. Give me the high sign. And,
10 by the way, I've indirectly had the conversation. My jury is
11 still out. I will see by either 4:00 today whether we will
12 alter the composition of the jury since there will be no court
13 tomorrow.

14 MR. IGNALL: Oh, yeah. I -- okay. Thank you, Your
15 Honor.

16 THE COURT: All right. Thank you.

17 COUNSEL: Thank you, Your Honor.

18 (Jury enters at 2:22:17 p.m.)

19 THE CLERK: All rise. Ladies and gentlemen, we are
20 back on the record.

21 THE COURT: Good afternoon. You may be seated.
22 Thank you. You may proceed.

23 MR. IGNALL: The Government calls Frank Preve.

24 FRANK PREVE, GOVERNMENT'S WITNESS, SWORN

25 THE CLERK: Please sit and state and spell your name

Preve - Direct

141

1 for the record for me.

2 MR. PREVE: My name is Frank James Preve, P-R-E-V-E.

3 DIRECT EXAMINATION

4 BY MR. IGNALL:

5 Q Good afternoon, Mr. Preve.

6 A Good afternoon, sir.

7 MR. IGNALL: May I proceed, Your Honor?

8 THE COURT: You may proceed.

9 BY MR. IGNALL:

10 Q Mr. Preve, in what city and state do you currently live?

11 A I live in Coral Springs, Florida.

12 Q And, at least continuously, how many years have you lived
13 in Florida?

14 A Since 1999.

15 Q And, how old are you currently?

16 A 72.

17 Q Have you had any education after high school?

18 A Yes. I graduated from the University of Nebraska in
19 Omaha in 1968, and I graduated from the University of Florida,
20 Gainesville, with a Master's Degree in Latin American studies
21 and International Economics in 1969.

22 Q And, after you got your Master's Degree, what business
23 did you work in?

24 A I went into international banking.

25 Q And, did you work for more than one bank?

Preve - Direct

142

1 A Yes, I did.

2 Q And, what bank did you work for?

3 A I originally worked for Citizens and Southern National
4 Bank in Atlanta, Georgia. Then I worked for Citizens Southern
5 International Bank in Miami, Florida. And, then the third
6 bank was the International Bank of Miami in Miami, Florida.

7 Q And, when did you work for this International Bank of
8 Miami?

9 A I started there in 1979.

10 Q And, how long did you work there?

11 A I worked there approximately two -- a little more than
12 two years.

13 Q Were you ever charged with a crime related to your work
14 at the International Bank of Miami?

15 A Yes, I was.

16 Q And, were you ever convicted of a crime?

17 A Yes, I was.

18 Q And, what were you convicted of?

19 A I was -- I pled guilty to two counts. One count was
20 making a false entry in the record of a national bank and the
21 second was making a false statement to a national bank.

22 Q And, when were you convicted?

23 A The incidents occurred in 1981, I was convicted in 1985.

24 Q And, were you sentenced?

25 A Yes, I was.

Preve - Direct

143

1 Q And, in what -- was it in Federal Court?

2 A Yes, it was in the Southern District of Florida.

3 Q And, what was your sentence?

4 A Proba -- three years probation, a fine and restitution.

5 Q When you were working at this International Bank of
6 Miami, did you have an occasion to meet someone named George
7 Levin?

8 A Yes. Actually, I met Mr. Levin several years before
9 while I was with C&S International Bank. He was a customer of
10 that bank and became a customer in the International Bank of
11 Miami as well.

12 Q And, what type of business or businesses was Mr. Levin
13 in?

14 A Mr. Levin was a very dynamic entrepreneur who was in a
15 number of businesses, a lot of real estate, but also in the
16 kit car business (phonetic).

17 Q At any point did you work for Mr. Levin?

18 A Yes.

19 Q And, did you work for Mr. Levin more than once?

20 A Yes, I did.

21 Q And, when was the first time?

22 A The first time would have been from 1983 to -- through
23 1988.

24 Q And, what type of work did you do for Mr. Levin?

25 A I was as an independent consultant. I did consultancy

Preve - Direct

144

1 work for him primarily as a project manager of various
2 investments that he had.

3 Q And, what does it mean to be a project manager of various
4 investments?

5 A It -- being a project manager would mean that I would do
6 the due diligence on a prospective investment and if it were
7 approved normally I would take over that investment until it
8 was brought in to fruition. For instance, I rehabbed a hotel
9 in Atlantic City for Mr. Levin in 1985. And, when that was
10 done I turned it over to a general manager who actually
11 operated the property.

12 Q And, you said you worked for Mr. Levin a second time.
13 When was that?

14 A I worked for Mr. Levin from mid-1999 through mid-2010.

15 Q And, where were you living at that point?

16 A I was living in South Florida.

17 Q And, where was Mr. Levin living?

18 A Mr. Levin also was living in South Florida.

19 Q And, the second stint working for Mr. Levin, what type of
20 work did you do for him?

21 A Mr. Levin's scope of companies had expanded significantly
22 since the first time I had been employed by him, so he had
23 approximately 35 different companies. And, I -- and they were
24 not highly organized from a financial perspective so my
25 primary job was to coordinate the financial reporting of all

Preve - Direct

145

1 the entities so that they would be on a common footing.

2 I also did extensive due diligence for him for -- on new
3 investments.

4 Q What do you mean by due diligence on new investments?

5 A Due diligence is the process by which a prospective
6 investment is actually analyzed to see if it meets the
7 investment standards that Mr. Levin would set.

8 Q And, did you analyze financial data at all on behalf of
9 Mr. Levin?

10 A Yes, I did.

11 Q And, what did that entail?

12 A Normally, an analysis of the financial statements, the
13 profit and loss statement, the balance sheets. Over a period
14 of time analyzing the cash flows, both historic and the
15 forecasted cash flows from a prospective investment.

16 Q And, was this in any way involved in deciding whether to
17 advise Mr. Levin about making an investment?

18 A Yes, it would.

19 Q Are you familiar with any companies that Mr. -- or
20 partnerships or other entities of any kind that included the
21 name Banyon?

22 A Yes.

23 Q And, were they affiliated with Mr. Levin in any way?

24 A Yes.

25 Q All right. And, just generally, what did this Banyon

Preve - Direct

146

1 group of entities do?

2 A The Banyon group of entities were formed to handle a
3 specific type of investment that Mr. Levin was making and that
4 was in the acquisition of confidential settlement --
5 settlement agreements.

6 Q Okay. And, the name Banyon, do you know where that came
7 from originally?

8 A Yes. Mr. Levin initially, in 2007, made these settlement
9 purchases in his own personal name, but quickly decided that
10 he needed the protection of an LLC. And, the only LLC that he
11 had available was named -- that wasn't being used for other
12 purposes was Banyon 103032, LLC. It happened to be -- that's
13 the name of a condominium project in the Bahamas that Mr.
14 Levin was going to use that LLC to acquire, but he did not do
15 so, so that was just sitting on the shelve, as we say.

16 Q Do you know when Mr. Levin first became involved in any
17 of these Banyon investments, as we'll call them. What year?

18 A The first investments were made in July 2007.

19 Q All right. Are you familiar with someone named Scott
20 Rothstein?

21 A Yes, I am.

22 Q Do you know if Mr. Levin -- let me ask it differently.
23 Was Mr. Rothstein involved at all in these Banyon investments?

24 A Yes.

25 Q And, do you know how Mr. Levin first met Mr. Rothstein?

Preve - Direct

147

1 A Mr. Levin was introduced to Mr. Rothstein by a common
2 friend of both or common business associate of both Mr.
3 Rothstein and Mr. Levin. And, Mr. Levin did some -- did a
4 trip to the West Coast of Florida to look at the prospect of
5 going on a Board of Directors of a company for which Mr.
6 Rothstein was the general counsel.

7 Q And, at some point did Mr. Levin talk to you about a
8 different investment that Mr. Rothstein had proposed, this
9 Banyon type investment?

10 A Yes.

11 Q Without going into the details. Okay. And, did you and
12 Mr. Levin talk about investing in these Banyon -- what we
13 later will call the Banyon type investments?

14 A Well, Mr. Levin actually made the decision to invest
15 without talking to me initially and -- but after he made the
16 initial investment, we then discussed extensively the type of
17 investment that these confidential settlements represented.

18 Q All right. And, without going into the details, but is
19 this an investment that Mr. Levin believed would yield a high
20 return?

21 A Absolutely.

22 Q Okay. And, were you at all involved in setting up any
23 entities associated with this investment?

24 A I was involved in setting up the business practices of
25 the various Banyon entities.

Preve - Direct

148

1 Q Were you personally aware of whether Mr. Levin invested
2 any money himself in these Banyon type investments?

3 A Yes.

4 Q And, do you know how much he invested in say early on in,
5 you know, 2007 into early 2008?

6 A Could you repeat the question, please?

7 Q Do you know how much Mr. Levin initially invested with
8 Mr. Rothstein through these Banyon investments?

9 A He personally and through his bank borrowings, probably
10 invested 20 to \$30 million in the first six, seven months of
11 operation.

12 Q At some point did Mr. Levin open up these investments to
13 people he knew to participate?

14 A Yes, he did. At the end of 2007 he started a program
15 that he called Friends and Family, in which he -- he issued
16 promissory notes to those people to help finance the
17 acquisition of the settlements.

18 Q So, was Mr. Levin in any way guaranteeing a return to
19 these friends and family?

20 A He gave his unconditional personal guarantee for the
21 promissory notes.

22 Q And, did Mr. Levin ultimately open up this investment to
23 people outside friends and family?

24 A Yes, he established a financial arrangement with a number
25 of hedge funds from New York that provided external capital

Preve - Direct

149

1 for the acquisitions of the settlements.

2 Q And, let me stop you there. When you say the "hedge
3 funds" what does that mean?

4 A A hedge fund is a privately owned financial organization
5 that does specialty financing or specialty investments.

6 Q And, did Mr. Levin guarantee returns to these hedge
7 funds?

8 A He guaranteed the principal of all his borrowings from
9 the hedge funds. The hedge funds who were actually acting
10 very similar to banking institutions.

11 Q And, were they -- did Mr. Levin promise them a certain
12 return on whatever they gave him?

13 A Well, he actually executed promissory notes and the
14 promissory notes carried a very high rate of interest. And,
15 so he had personally guaranteed that rate of interest.

16 Q And, do you know what Mr. Levin's source was to pay that
17 interest or to pay back the principal?

18 A The primary source would have been the collection of the
19 discounted settlement paper that he purchased from Mr.
20 Rothstein.

21 Q And, was it just from whatever the proceeds were of this
22 Banyon investments?

23 A Yes.

24 Q Okay. Did you ever do any work for Mr. Rothstein?

25 A Yes, I did.

Preve - Direct

150

1 Q And, were you ever paid by Mr. Rothstein for any work you
2 did?

3 A Yes, I was paid.

4 Q Now, with respect to these Banyon companies, was there
5 more than one Banyon entity that you helped set up?

6 A Yes.

7 Q And, why was there more than one?

8 A Initially there was more than one because the hedge funds
9 or the New York finance houses required what we call a
10 "captive organization" to handle just their business. This
11 was a bankruptcy protection that a lot of financial
12 institution implement. And, in this particular case there
13 were three hedge funds, so there were three additional Banyons
14 in -- in addition to the initial Banyon organization.
15 Subsequent to that, there were other types of financing
16 created to acquire their settlements and they each had their
17 own Banyon entity as well.

18 Q But did they all have the word Banyon in the name?

19 A Yes, they did.

20 Q So, is it okay for shorthand we just call them Banyon
21 investments?

22 A Yes, sir.

23 Q If I want to be more specific, I'll ask a more specific
24 question.

25 A Yes, sir.

Preve - Direct

151

1 Q But in connection with these Banyon investments were you
2 ever charged with a crime?

3 A Yes.

4 Q And, what crime were you charged with?

5 A I was charged with one count of conspiracy to commit wire
6 fraud.

7 Q And, without going into the details, what was the -- were
8 you accused of failing to do something?

9 A Exactly. I failed to inform prospective investors of a
10 deviation from the investment document which -- on which they
11 invested.

12 Q And, have you pleaded guilty to that crime?

13 A Yes, I have.

14 Q And, where did you plead guilty to that crime?

15 A I pled guilty in Federal Court in the Southern District
16 of Florida.

17 Q And, have you been sentenced for that crime?

18 A Yes, I have.

19 Q And, what was your sentence?

20 A Forty-two months.

21 Q And, have you served that 42 months yet?

22 A No, I have not.

23 Q And, when are you scheduled to begin serving that
24 sentence?

25 A May 31st, 2016.

Preve - Direct

152

1 Q Do you have a plea agreement with the Southern District
2 of Florida in connection with that case?

3 A Yes, I do.

4 Q All right. I would like to bring up, just for the
5 witness, Exhibit 198. Do you recognize Exhibit 198?

6 A Yes, I do.

7 Q Okay. And, if you want a hard copy I can probably get
8 you one too, but maybe not as easily as I thought. What is
9 Exhibit 198?

10 A Exhibit 198 is the plea agreement which I executed with
11 the U.S. Attorney's Office in the Southern District of
12 Florida.

13 Q And, did you make an agreement with the Southern District
14 of Florida to cooperate with law enforcement?

15 A That is one of the -- one of the aspects of the agreement
16 that I agreed to, yes.

17 Q Even though you've already been sentenced, as you sit
18 here today do you have any hope for leniency off of that 42
19 month sentence?

20 A Yes, I do.

21 Q And, what is your understanding of what you could do that
22 might get you some leniency on the sentence?

23 A I have cooperated extensively with the U.S. Attorney's
24 Office in South Florida. And, I have agreed to continue to
25 cooperate with the U.S. Attorney's Office here in Philadelphia

Preve - Direct

153

1 to the best of my ability. And, if -- presumably, if I am
2 honest and fully cooperative, they will make a recommendation
3 to the Court.

4 Q All right. Has anyone made you a promise about what
5 might happen to your sentence?

6 A Absolutely not.

7 Q Let me move you ahead to 2009. In 2009, did Mr. Levin
8 have any difficulty raising money from hedge funds to invest
9 in these Banyon investments?

10 A Yes, he did.

11 Q And, did you have any discussions with him about seeking
12 other sources of funds to invest in these Banyon investments?

13 A Yes. We had extensive discussions.

14 Q And, did Mr. Levin tell you he had met anyone who might
15 be able to help provide funding?

16 A Yes, he did.

17 Q And, who was that?

18 A He said he had met Barry Bekkedam of Ballamor Capital and
19 that after several months of discussions that he thought that
20 Mr. Bekkedam could be a valuable resource for raising capital
21 to acquire settlements.

22 Q After talking with Mr. Levin about this, did you
23 personally have an opportunity to meet with Mr. Bekkedam?

24 A Yes, I did.

25 Q Approximately, when was that? I know you might not know

Preve - Direct

154

1 the exact day, but --

2 A I believe my first -- first meeting with Mr. Bekkedam
3 occurred in February of 2009.

4 Q All right. Do you see Mr. Bekkedam anywhere here in the
5 court?

6 A Yes, I do.

7 Q And, can you identify him by where he is sitting and what
8 he is wearing?

9 A To my right, second gentleman from my right.

10 MR. IGNALL: I would like the record to reflect that
11 the witness has identified defendant Barry Bekkedam.

12 THE COURT: The record shall so reflect.

13 BY MR. IGNALL:

14 Q All right. When you met with Mr. Bekkedam, did he ask
15 about how these Banyon investments worked?

16 A Yes, he did.

17 Q And, at this point, how much of Mr. Levin's own money did
18 he have invested in various iterations of this Banyon? Do you
19 know approx -- not to the dollar, but --

20 A He -- by his own money? Do you mean including the hedge
21 fund money?

22 MR. EGAN: Objection.

23 Q No, let me ask it differently. How much -- we'll get to
24 how much he was guaranteeing outside, but how much of his own
25 money was invested in -- was it more than \$100 million?

Preve - Direct

155

1 MR. EGAN: Objection.

2 THE COURT: Sustained. You may rephrase.

3 BY MR. IGNALL:

4 Q Well, let me ask it differently. Had Mr. Levin invested
5 any money of his own in these various settlements that were
6 part of the Banyon investments?

7 A Yes, but most of that money had been repaid to Mr. Levin
8 and most of the money was borrowed money that he had in the --
9 in the settlement business in 2009.

10 Q And, how much money had he borrowed in one form or
11 another to invest in these Banyon settlements in 2009?

12 A Close to \$300 million.

13 Q And, had Mr. Levin guarantee amounts even beyond that
14 \$300 million to other people who were investing in some way?

15 A All Mr. Levin's borrowings, in whatever form, were
16 personally guaranteed by him.

17 Q And, with your meetings with Mr. Bekkedam, was Mr.
18 Bekkedam aware of how much Mr. Levin had borrowed to invest
19 with these Banyon-type companies?

20 MR. EGAN: Objection to the form of the question,
21 was Mr. Bekkedam aware?

22 THE COURT: Sustained.

23 BY MR. IGNALL:

24 Q Well, from meetings that you had with Mr. Bekkedam.

25 MR. EGAN: Same objection.

Preve - Direct

156

1 THE COURT: Just a moment, please. You can ask him
2 more directly, leading included, whether or not it was
3 articulated to him specifically --

4 MR. IGNALL: All right.

5 THE COURT: -- by Mr. Bekkedam.

6 BY MR. IGNALL:

7 Q Well, let me ask -- I might try it slightly differently.
8 From any meeting you were in with Mr. Bekkedam present, did
9 anyone at such a meeting discuss how much Mr. Levin had
10 invested with these Banyon entities?

11 A Yes. Mr. Bekkedam was provided with financial statements
12 which clearly reflected the liability of Mr. Levin.

13 Q And, from any meeting you were in or any information you
14 provided to Mr. Bekkedam, do you know if Mr. Bekkedam was
15 aware of the guarantees that Mr. Levin had made to the hedge
16 funds or other people who provided him money?

17 MR. DUNCAN: Same objection, also compound.

18 THE COURT: Overruled too compound. Sustained as to
19 the form.

20 BY MR. IGNALL:

21 Q Okay. With respect to the hedge funds, based on what you
22 observed, was Mr. Bekkedam aware of how much Mr. Levin had
23 guaranteed to pay the hedge funds?

24 MR. DUNCAN: Same objection.

25 THE COURT: Overruled.

Preve - Direct

157

1 A Yes.

2 BY MR. IGNALL:

3 Q Same question as to investors other than hedge funds who
4 provided money to Mr. Levin to put into these Banyon-type
5 investments?

6 A Yes.

7 Q Do you know what business Mr. Bekkedam had at this time,
8 in February or so of March -- in February or so of 2009?

9 A Mr. Bekkedam had a registered investment advisory firm.

10 Q And, do you know the name of that?

11 A Ballamor Capital.

12 Q Did Mr. Bekkedam ever tell you how much money he had to
13 advise people -- well, that's a bad way to phrase the
14 question. Let me try that again. Did Mr. Bekkedam ever tell
15 you how much money he was managing as part of this company?

16 A In excess of \$4 billion.

17 Q Did you ever -- let me ask you something else. Were you
18 involved in any way in setting up a way for Mr. Bekkedam's
19 clients to invest in some type of Banyon investments?

20 A I assisted in the formation of Banyon Income Fund Limited
21 Partnership.

22 Q And, what was the per -- purpose of Banyon Income Fund
23 Limited Partnership?

24 A The purpose of that partnership was to offer an
25 opportunity to Mr. Bekkedam's clients to make an alternative

Preve - Direct

158

1 investment as equity partners -- as limited equity partners in
2 the partnership with their capital going to acquire
3 settlement.

4 Q And, was part of this partnership, did that involve Mr.
5 Levin guaranteeing any part of the investment?

6 A Mr. Levin guaranteed up to the first \$100 million.

7 Q And, did you participate in any discussion with Mr.
8 Bekkedam where you -- where anyone at this meeting discussed
9 Mr. Levin guaranteeing up to \$100 million?

10 A That issue -- the guarantee was discussed on various
11 occasions in mid-2009.

12 Q Did you ever deal with anyone else who worked for
13 Ballamor Capital in connection, first, with the Banyon Income
14 Fund?

15 A I dealt primarily with Mr. Larry Rovin.

16 Q And, do you know what Mr. Rovin's role was at Ballamor
17 Capital?

18 A I believe his title was Managing Director and General --
19 Managing Director and General Counsel.

20 Q And, did you ever participate in any meetings or
21 conversations with Mr. Bekkedam about Mr. Rothstein needing
22 more money to fund these investments?

23 A Yes.

24 Q Now, as part of your job advising Mr. Levin, do you know
25 if Mr. Levin had any other business dealings with Mr.

Preve - Direct

159

1 Bekkedam?

2 A Yes, he did.

3 Q And, do you remember what those business dealings were
4 generally, without going into the details?

5 A Mr. Bekkedam, through Ballamor Capital, had invested in
6 what I call alternative investments, which were primarily
7 small companies, sometimes turnaround situations, invest in
8 small companies and then he would sell participation in those
9 investments to his clients.

10 Q Well, no, I'm sorry, I may have asked that poorly. Are
11 you aware of any particular business deals that Mr. Levin was
12 going to engage in with Mr. Bekkedam?

13 A Yes.

14 Q Okay. Let's -- let me ask maybe a more focused question.
15 Are you aware of any deal that Mr. Levin was going to engage
16 in involving some sort of a revenue bond from Colorado?

17 A Yes.

18 Q And, again, without going into details, what generally
19 was that investment?

20 A That investment was where Mr. Levin would acquire the
21 bonds from Mr. Bekkedam. I think there was approximately \$3.1
22 million in bonds. And, for \$1.1 million in cash and
23 assumption of a \$2 million bank loan.

24 Q And, do you know what bank that loan was from?

25 A The bank was -- the bank was Nova Bank.

Preve - Direct

160

1 Q And, who owed the \$2.1 million originally on that loan
2 that Mr. Levin was going to assume?

3 A I believe it was Mr. Bekkedam.

4 MR. ENGLE: Objection to the just belief.

5 THE COURT: Sustained.

6 MR. IGNALL: I'm sorry, what --

7 MR. ENGLE: I believe it was.

8 MR. DUNCAN: Strike -- strike the answer. Can we
9 strike the answer, Your Honor?

10 THE COURT: Yes, sir. It is stricken. The jury
11 should disregard that portion of the witness's testimony.

12 BY MR. IGNALL:

13 Q Do you know from any dealings you had working for Mr.
14 Levin as to who originally owed the money to Nova Bank? If
15 you don't, that's fine. I'm not --

16 A I'm almost positive it was Mr. Bekkedam but my
17 recollection right now, there could have been an LLC involved,
18 so I --

19 MR. DUNCAN: Objection. Move to strike.

20 THE COURT: The answer is -- the objection is
21 sustained. The answer is stricken. It has to be by personal
22 knowledge.

23 BY MR. IGNALL:

24 Q All right. Do you recall any other business transactions
25 between Mr. Bekkedam and Mr. Levin that you were involved in

Preve - Direct

161

1 through about April or May of 2009? And, let me turn your
2 attention to Exhibit 14, just for the witness, please.

3 MR. IGNALL: And, may I approach the witness?

4 THE COURT: Yes, sir.

5 Q If you could flip through Exhibit 14 and just tell me if
6 that refreshes your recollection about --

7 MR. DUNCAN: I'm not sure he said he's forgotten
8 anything. Object to refreshing his recollection if he hasn't
9 forgotten anything.

10 MR. IGNALL: Strictly speaking, correct.

11 THE COURT: Do you want to lay a foundation,
12 Counsel?

13 MR. IGNALL: I will.

14 BY MR. IGNALL:

15 Q Can you please review Exhibit 14 for a moment. Do you --

16 MR. DUNCAN: I object to that process. If he asks
17 him a question, if he can't remember the answer, that's fine
18 and then he can refresh his recollection, but doing it the
19 other way, it's backwards.

20 THE COURT: Would you include all the steps of the
21 process, lay the foundation.

22 MR. IGNALL: I'm not -- I've moved past refreshing
23 recollection.

24 THE COURT: Very well.

25 MR. IGNALL: I'm going to ask the witness if he --

Preve - Direct

162

1 I'll ask the question once he's taken a look.

2 BY MR. IGNALL:

3 Q Do you recognize Exhibit 14?

4 A Yes.

5 Q What is Exhibit 14?

6 A Exhibit 2 -- Exhibit 14 is a summary of --

7 Q Well, let me just ask you. Is it -- what type of
8 document is it?

9 A Oh, I'm sorry. It's an email from Barry Bekkedam to me
10 and a copy to George Levin.

11 Q And, what is the date of that email?

12 A April 3, 2009.

13 Q And, do you recall getting this email on or about April
14 3, 2009?

15 A Yes, I do.

16 MR. IGNALL: All right. The Government moves into
17 evidence Exhibit 14.

18 MR. DUNCAN: No objection.

19 THE COURT: Admitted.

20 BY MR. IGNALL:

21 Q What is Exhibit 14 discussing just generally?

22 A It is discussing two prospective investments by Mr. Levin
23 to Mr. Bekkedam.

24 Q And, what are those two investments?

25 A One are the bonds that we previously -- revenue bonds

Preve - Direct

163

1 from Colorado that we previously discussed. And, the other is
2 a loan to Ballamor Capital.

3 Q And, what is the loan to Ballamor Capital? Well, let me
4 ask you, who was going to loan money to Ballamor Capital?

5 A I'm sorry. May I restate my answer?

6 Q Yes.

7 A There is a third investment and I thought that was number
8 two, but actually number two is a proposal by Mr. Bekkedam for
9 Mr. Levin to make a \$10 million to Mr. Bekkedam so Mr.
10 Bekkedam could repay old line investors that he had in
11 Ballamor Capital.

12 Q All right. Thank you. If I could turn your attention to
13 exhibit -- I'm sorry, I don't have a problem with that.

14 If we could turn to Exhibit 15, just for the witness
15 right now. And, it should be on your screen now, Mr. Preve.
16 Do you recognize Exhibit 15?

17 A Yes, I do.

18 Q And, what is Exhibit 15?

19 A Exhibit 15 is an email from Barry Bekkedam to me with a
20 copy to Mr. Levin in which he is forwarding a copy --
21 forwarding an email from Brian Hartline of Nova Bank.

22 Q All right. Let me stop you there. Do you recall getting
23 this email on or about April 3rd of 2009?

24 A Yes, I do.

25 MR. IGNALL: All right. The Government moves into

Preve - Direct

164

1 evidence Exhibit 15.

2 MR. DUNCAN: No objection.

3 THE COURT: Admitted.

4 MR. IGNALL: May we publish that to the jury?

5 THE COURT: Granted.

6 BY MR. IGNALL:

7 Q Now, what is the email that Mr. Bekkedam has forwarded to
8 you and Mr. Levin? If we can scroll down a little bit, Agent
9 Boyer.

10 A It's an email which outlines what the bank is going to
11 require to allow Mr. Levin to assume the loan that they had
12 extended to Mr. Bekkedam or one of his entities for the
13 Colorado revenue bonds.

14 Q In addition -- we can take that down -- to the deals
15 we've talked about here, do you know if Mr. Levin was involved
16 in possibly investing in a bank?

17 A Yes.

18 Q And, do you know if Mr. Levin had any discussions that
19 you were part of with Mr. Bekkedam about investing in a bank?

20 A Yes.

21 Q And, part of your discussions -- decisions you were part
22 of, what were they about in terms of Mr. Levin investing in a
23 bank?

24 A The initial discussions were the possibility of Mr. Levin
25 investing in a -- in a Pennsylvania bank which would then --

Preve - Direct

165

1 MR. ENGLE: Your Honor, I would like to object at
2 this point. If the witness is testifying to out-of-court
3 statements that Mr. Levin made, that's hearsay.

4 THE COURT: Sustained.

5 MR. IGNALL: I have two responses. I'm asking about
6 what the witness -- well, let me -- may I address it at
7 sidebar?

8 THE COURT: Yes. Yes, sir.

9 MR. IGNALL: I think it is probably easier to do
10 that?

11 THE COURT: If you wish to stretch your legs, you
12 can.

13 (Sidebar begins)

14 THE COURT: Yes, sir.

15 MR. IGNALL: My first issue is I'm not sure who is
16 objecting during the cross-examination. We have had more than
17 one defense lawyer object now.

18 THE COURT: This is true.

19 MR. IGNALL: But as to this, the objection itself,
20 what I am laying here is what Mr. Levin was going to invest in
21 as well as what dealings he had with Mr. Bekkedam. So,
22 although there may be some truth to the matter asserted, I am
23 not introducing it for that purpose, only to set the
24 background for the later deals.

25 THE COURT: But it permits the jury to infer that it

Preve - Direct

166

1 came directly from his mouth. And, I think counsel is
2 objecting to the fact that it is still hearsay no matter
3 what --

4 MR. ENGLE: Mr. Levin is an available witness.

5 MR. IGNALL: Well, I'll ask it --

6 MR. ENGLE: You can ask him.

7 MR. IGNALL: I'll ask it differently.

8 MR. DUNCAN: While we are here, Your Honor, just to
9 address, are they suggesting that Mr. Preve is a co-
10 conspirator in this case?

11 THE COURT: Is that a rhetorical question?

12 MR. DUNCAN: No, I'm just asking -- just asking at
13 sidebar. If he's not a co-conspirator, then obviously
14 (inaudible).

15 MR. IGNALL: We're not seeking to claim Mr. Preve as
16 a co-conspirator for 801D(2)(e) reasons.

17 THE COURT: Okay.

18 MR. DUNCAN: Thank you, Your Honor.

19 MS. BARRY: Are we going to have a decision on who
20 is going to be objecting for Mr. Bekkedam?

21 UNIDENTIFIED SPEAKER: We're going to arm wrestle.
22 One attorney will --

23 THE COURT: Thank you very much.

24 UNIDENTIFIED SPEAKER: He's more photogenic.

25 (Sidebar ends)

Preve - Direct

167

1 THE COURT: You may continue.

2 BY MR. IGNALL:

3 Q Were you involved in any discussions where Mr. Bekkedam
4 participated about Mr. Levin investing in a bank?

5 A Yes.

6 Q All right. Tell us about any discussion where Mr.
7 Bekkedam was present.

8 A The initial discussion between Mr. Bekkedam and Mr.
9 Levin, which I attended --

10 MR. ENGLE: Objection, Your Honor.

11 THE COURT: Just a moment, please. The objection,
12 assuming it's coming, would be sustained in terms of Mr.
13 Bekkedam being present.

14 MR. IGNALL: Well, may I approach at sidebar on
15 that.

16 THE COURT: Yes.

17 MR. IGNALL: I think -- I might understand slightly
18 differently from what I said previously, Judge.

19 THE COURT: All right. Apologies and ask for your
20 forbearance. Thank you.

21 (Sidebar begins)

22 MR. IGNALL: The Government --

23 THE COURT: I have a bad knee.

24 MR. IGNALL: Oh, sorry.

25 UNIDENTIFIED SPEAKER: You made me stretch my legs.

Preve - Direct

168

1 THE COURT: Yes, sir. Let me just, first, you stood
2 up. What was said?

3 MR. ENGLE: My objection is that it still calls for
4 a hearsay statement of Mr. Levin.

5 THE COURT: Correct.

6 MR. ENGLE: Whether Mr. Bekkedam is present at the
7 hearing --

8 THE COURT: Exactly.

9 MR. ENGLE: -- has no effect on -- it's an out-of-
10 court statement made by Mr. Levin --

11 THE COURT: Unless --

12 MR. IGNALL: -- for the truth of the matter
13 asserted.

14 THE COURT: -- unless there is test adopted (sic).

15 MR. IGNALL: No, it goes to the affect on Mr.
16 Bekkedam's part of the process. So he understands (A) what
17 he's proposing to Mr. Levin and what Mr. Levin is agreeing to.
18 They are all part of the same meeting.

19 THE COURT: He could have been on his cellphone
20 texting or something at the time, Counsel.

21 MR. ENGLE: How can Mr. Preve testify what was in
22 Barry's mind as a result of a hearsay statement --

23 MR. IGNALL: No, he's going to testify --

24 MR. EGAN: -- for Mr. Levin.

25 THE COURT: Just one at a time. First of all, let

Preve - Direct

169

1 me just put it this way. First of all, the fact that Mr.
2 Bekkedam is there is proving nothing other than physically he
3 was present. It does not mean that he heard it, that he
4 participated, that he accepted or anything else.

5 MR. IGNALL: Okay. I can lay that foundation.

6 THE COURT: And, the fact that it was stated
7 nonetheless is an out-of-court declaration offered for the
8 truth of the matter. And, if it is not offered for the truth
9 of the matter, to argue that is just to show its affect upon
10 the listener, you have to demonstrate that Mr. Bekkedam was
11 listening and made a reaction or something like that.

12 MR. IGNALL: Okay.

13 THE COURT: Or otherwise acknowledged it and didn't
14 say anything, because it's otherwise a tacit admission to --

15 MR. IGNALL: No, I'm not necessarily suggesting it's
16 a tacit admission, but they are having discussions, all three
17 of them together, about what Mr. Levin wants to do. So, based
18 on that Mr. Bekkedam's knows what Mr. Levin wants to do.

19 MR. ENGLE: Only -- except for the fact that you
20 need to establish that through Mr. Levin on the witness stand
21 saying, I said this. It's his statement.

22 THE COURT: He's suggesting that it's not offered
23 for the truth of the matter, just the effect upon Mr.
24 Bekkedam. Now, what effect upon Mr. Bekkedam is relevant
25 here?

Preve - Direct

170

1 MR. IGNALL: Because now he knows what Mr. Levin
2 wants to do.

3 MR. ENGLE: That goes to his state of mind in terms
4 of --

5 UNIDENTIFIED SPEAKER: If he heard it.

6 MR. IGNALL: I'll set -- I'll lay the foundation for
7 what he heard.

8 THE COURT: Counsel, bring this information via Mr.
9 Levin. If he testifies I was talking to Mr. Bekkedam, we had
10 a conversation, that's one thing. But to say that the man was
11 present in and of itself is to allow the jury to infer way too
12 much here.

13 MR. IGNALL: Well, I think given what Mr. Bekkedam
14 knows is something we need to prove. Certainly the effect on
15 Mr. -- when it's a defendant is clearly admissible.

16 MR. ENGLE: Well, you can't prove my client's
17 mindset or intent --

18 MR. IGNALL: The jury --

19 MR. ENGLE: -- through Mr. Preve.

20 MR. IGNALL: Absolutely can. The jury can infer
21 what they want based on what he's learned.

22 THE COURT: All right. Let me put it this way. Let
23 me try to understand it better. You have three men present.

24 MR. IGNALL: Yes.

25 THE COURT: You have three men present. They come

Preve - Direct

171

1 there with a purpose, presumably. There could be testimony
2 about something stated by Mr. Bekkedam as to his intent to go
3 to this three person meeting. Anything that he articulates
4 prior to the meeting or anything he articulates during the
5 meeting or post meeting that indicates that he knew or heard
6 it, that's one thing. That's competent evidence. But to just
7 simply say, he's standing there --

8 MR. IGNALL: Let me try -- let me try and lay that
9 foundation. All right. Thank you.

10 (Sidebar ends)

11 BY MR. IGNALL:

12 Q Would --

13 MR. IGNALL: I'm sorry, Your Honor. May I proceed?

14 THE COURT: You may proceed.

15 BY MR. IGNALL:

16 Q Were you present at any discussions with Mr. Levin and
17 Mr. Bekkedam both there where all of you discussed Mr. Levin
18 investing in a bank of any kind?

19 MR. ENGLE: Objection, hearsay.

20 THE COURT: Overruled.

21 A Yes.

22 BY MR. IGNALL:

23 Q Did Mr. Bekkedam himself participate in these
24 discussions?

25 A Yes.

Preve - Direct

172

1 Q Did Mr. Bekkedam ever suggest to Mr. Levin a particular
2 bank in which Mr. Levin could invest?

3 MR. ENGLE: Objection to the leading.

4 THE COURT: It's leading. Sustained. Only leading.

5 BY MR. IGNALL:

6 Q Did Mr. Bekkedam ever say anything about a particular
7 bank?

8 A Not at that initial meeting.

9 Q What did he say at the initial meeting?

10 A The initial meeting was where Mr. Levin outlined his
11 requirements to invest in a bank that could hold Florida Iota
12 Trust accounts. And, Mr. Bekkedam brought up the name of
13 Flagler Bank in Palm Beach County as prospective candidate to
14 do that sort of thing, but he did not go into any detail on
15 how to acquire the bank at that time.

16 Q Did Mr. Bekkedam ever suggest a different bank for Mr.
17 Levin to invest in?

18 MR. ENGLE: Your Honor, I'm still going to object.

19 THE COURT: Sustained. Sustained. Leading for the
20 question, please.

21 BY MR. IGNALL:

22 Q Were there any other discussions that you had where Mr.
23 -- with Mr. Bekkedam about Mr. Bekkedam suggesting any other
24 banks?

25 A I was not there for any dis -- any oral discussions about

Preve - Direct

173

1 any other bank. I was just recip -- I was the recipient of
2 emails concerning the investment in another bank.

3 Q All right. Are you familiar with a bank called Nova
4 Bank? I think we mentioned it a minute ago.

5 A Yes, I am.

6 Q And, did you ever have any discussions with Mr. Bekkedam
7 about Nova Bank?

8 A Yes, I did.

9 Q And, did Mr. Bekkedam describe his relationship with Nova
10 Bank at any time to you?

11 A Yes, he did.

12 Q And, how did he describe Nova Bank?

13 A He said it was a bank that had a great future, that he
14 owned or he controlled. He didn't say own, he said he
15 controlled Nova Bank. And, that he thought it could be
16 utilized as a vehicle to expand into Florida.

17 Q And, did he act in any way that showed you what control
18 he may or may not have had over Nova Bank?

19 MR. EGAN: Objection.

20 THE COURT: Sustained, leading.

21 MR. IGNALL: Can I ask the basis so I can --

22 THE COURT: Leading.

23 MR. IGNALL: Okay.

24 BY MR. IGNALL:

25 Q Did Mr. Bekkedam -- did you observe how Mr. Bekkedam

Preve - Direct

174

1 viewed the bank, Nova Bank?

2 MR. ENGLE: Objection, Your Honor.

3 THE COURT: I'm not sure I understand the question,
4 Counsel. Take a moment please.

5 MR. IGNALL: Let me try it again. May we approach
6 at sidebar, Your Honor?

7 THE COURT: Surely.

8 THE CLERK: Could this be a good chance for a
9 recess, Your Honor?

10 THE COURT: I think it would be.

11 MR. IGNALL: Okay.

12 THE CLERK: Fifteen minutes, please.

13 (Jury exits at 3:09:43 for recess)

14 THE COURT: We can do it in open court. Are you
15 going to give a listening foundation?

16 UNIDENTIFIED SPEAKER: It's funny at trial I had to
17 do this, totally appreciate the real world when it comes to
18 this, don't look at (inaudible).

19 THE COURT: Sir, you may step down if you wish.

20 MR. PREVE: Thank you, Your Honor.

21 THE COURT: Watch your step, please.

22 MR. ENGLE: Your Honor, may Mr. Bekkedam be excused
23 for just a moment?

24 THE COURT: Surely.

25 MR. ENGLE: Thank you.

Preve - Direct

175

1 UNIDENTIFIED SPEAKER: An actually, Your Honor, I
2 believe if we're going to do this in open court it would be
3 best if the witness was --

4 THE COURT: That's what I'm saying, he can step
5 down. There is a sequestration, Counsel, if the both of them
6 are going outside.

7 MR. IGNALL: I'm sorry, if --

8 THE COURT: If this gentleman and Mr. Bekkedam are
9 going outside, there's a sequestration. Their paths should
10 not cross.

11 MR. IGNALL: Yeah. John, Agent Lyons, if you could
12 step outside with Mr. Preve. Agent Lyons will bring Mr. Preve
13 into the witness room. I think that will solve that.

14 (Pause)

15 UNIDENTIFIED SPEAKER: Don't --

16 UNIDENTIFIED SPEAKER: Obviously I've got to wait.

17 THE COURT: All right. You may be seated. Yes,
18 sir.

19 MR. IGNALL: I need -- I want to -- I would like to
20 respectfully reserve the right to revisit the leading
21 objection.

22 THE COURT: Yes, sir.

23 MR. IGNALL: One, I do not believe those questions
24 were leading. They are questions that could be answered yes
25 or no, but did Mr. Bekkedam suggest a bank, is a yes or no

Preve - Direct

176

1 question. It does not suggest the answer even though it can
2 be answered yes or no.

3 And, two, even insofar as it might be leading, under
4 Rule 104 that would be simply be to develop the witness's
5 testimony so I could ask the next question, what bank is it.

6 MR. ENGLE: Except for the fact that if you do that
7 with the first question and the second question and the third
8 question, 104 never really kicks in because you're not setting
9 anything up, you're just doing it repeatedly.

10 THE COURT: That's what I teach my trial ed.
11 (phonetic) student at Penn, but nevertheless, Counsel --

12 MR. IGNALL: I don't -- I think, did he discuss
13 something is a yes or no question.

14 THE COURT: My problem, frankly, even with did he
15 discuss something, is suggesting that there was a discussion.

16 MR. ENGLE: Right.

17 THE COURT: And, --

18 MR. IGNALL: The answer could be no.

19 THE COURT: But the answer could also be was there
20 anything discussed when you met or what, if anything, occurred
21 when you met, better still.

22 MR. IGNALL: Okay. I'll try that, but I --

23 THE COURT: Not was there anything discussed, but
24 better still, you know, what occurred when you were there.
25 And, if he says, we had a discussion, --

Preve - Direct

177

1 MR. IGNALL: Okay.

2 THE COURT: -- about what? And, you can go from
3 there.

4 MR. IGNALL: But even, like, did Mr. Bekkedam ever
5 mention a bank, I'm not sure I develop the witness's testimony
6 without asking a question that includes the word "bank".

7 THE COURT: But if you are intending to elicit
8 subsequent testimony about a bank or the bank, you've set that
9 up with that initial question.

10 MR. IGNALL: Okay.

11 THE COURT: And, that's what I think counsel is
12 objecting to as leading.

13 MR. IGNALL: Okay.

14 THE COURT: Mr. Egan?

15 MR. EGAN: Yes, Your Honor. What, if anything, is
16 the cure for all ills.

17 THE COURT: Exactly. All right. And, it's a
18 double-edge sword, goes for both sides.

19 MR. IGNALL: I understand, Your Honor.

20 THE COURT: Now, on the issue of objections, who is
21 going to be the spokesperson for each --

22 UNIDENTIFIED SPEAKER: John.

23 MR. ENGLE: I will be.

24 THE COURT: Mr. Engle. And, on this team?

25 MR. EGAN: Me, Your Honor.

Preve - Direct

178

1 THE COURT: All right. And, your team counsel, Ms.
2 Barry or --

3 MR. IGNALL: Well, for this one it is going to have
4 to be me since I'm standing up here.

5 UNIDENTIFIED SPEAKER: Your Honor, may we vary from
6 witness to witness? We'll obviously tell the Court and --

7 THE COURT: If you do that just stick with the same
8 person throughout that witness.

9 UNIDENTIFIED SPEAKER: Absolutely. Absolutely, Your
10 Honor.

11 UNIDENTIFIED SPEAKER: That would be the plan, Your
12 Honor.

13 MR. IGNALL: And, at sidebar?

14 UNIDENTIFIED SPEAKER: What's that?

15 MR. IGNALL: Okay. Thank you, Your Honor.

16 THE COURT: Thank you.

17 (Recess at 3:14:04 p.m. to 3:26:27 p.m.)

18 THE COURT: Counsel ready?

19 COUNSEL: Yes, Your Honor.

20 THE COURT: Thank you. Mr. Ignall, what time did
21 you suggest we end.

22 MR. IGNALL: 4:15 -- 4:15 you think, early enough?

23 UNIDENTIFIED SPEAKER: I do.

24 MR. IGNALL: Okay. 4:15 would probably -- if I get
25 to a point at 4:12 that seems like it is a good break, I'll

Preve - Direct

179

1 let you know.

2 THE COURT: Fair enough.

3 MR. IGNALL: Someone will throw something at me.

4 THE CLERK: All rise.

5 (Jury in at 3:26:25 p.m.)

6 THE COURT: Thank you. You may be seated. You may
7 continue.

8 MR. IGNALL: All right. Thank you, Your Honor.

9 DIRECT EXAMINATION CONTINUES

10 BY MR. IGNALL:

11 Q Mr. Preve, prior to meeting Mr. Bekkedam have you ever
12 heard of Nova Bank?

13 A No.

14 Q At some point, did you become involved in Mr. Levin
15 making sort of an investment in Nova Bank?

16 A Yes.

17 Q And, what was your role?

18 A My role was to marshal the paperwork that Nova Bank or
19 Mr. Bekkedam or Mr. Rovin requested be completed to -- for the
20 investment.

21 Q Prior to meeting Mr. Bekkedam, had you done anything on
22 behalf of Mr. Levin in terms of investing in Nova Bank?

23 A No.

24 Q All right. At the time -- when did you first start doing
25 some work for Mr. Levin in terms of perhaps investing in Nova

Preve - Direct

180

1 Bank?

2 A At the end of May of 2009.

3 Q All right. At that time, were you familiar with Mr.
4 Levin's finances?

5 A Yes.

6 Q And, how were you familiar with his finances?

7 A I was in charge of creating and monitoring his personal
8 finances in the form of annual or semi-annual personal
9 financial statement.

10 Q And, as of May 2009, did Mr. Levin have much cash
11 available to invest in something?

12 A No.

13 Q Okay. Where was Mr. Levin's wealth at that point?

14 A Most of his wealth was tied up in either real estate or
15 in the settlement business.

16 Q Did Mr. Levin ask you to do any due diligence with
17 respect to Nova Bank?

18 A No. We both looked at the financial statements but I
19 didn't do any special due diligence on the bank.

20 Q With respect to the investment Mr. Levin was going to
21 make in Nova Bank, were you involved in putting up any of Mr.
22 Levin's assets, whether it's cash or anything else? I didn't
23 ask that well. Let me try that again.

24 Do you know what the source of funds was going to be
25 for Mr. Levin to purchase shares of Nova Bank or Nova

Preve - Direct

181

1 Financial Holding stock?

2 A The initial investment was going to be covered by a loan
3 from Nova Bank.

4 Q And, between you and Mr. Levin, who dealt primarily with
5 Nova Bank?

6 A I dealt primarily with Nova Bank.

7 Q And, from your dealings with Nova Bank, was Mr. Levin
8 looking to borrow money for any purpose other than purchasing
9 Nova Financial Holdings stock?

10 A Initially there was talk of a line of credit from Nova
11 Bank for the acquisition of the settlements, but that evolved
12 into just a direct loan for purpose of purchasing stock.

13 Q Was it your role working for Mr. Levin to take care of
14 any loan applications?

15 A Normally they would pass through my desk.

16 Q Are you aware of any time Mr. Levin applied for a loan
17 from Nova Bank other than to purchase Nova shares? Let me
18 back up. We talked earlier about the Colorado bond debt
19 assumption.

20 A Yes.

21 Q Okay. Other than that, in your role working for Mr.
22 Levin, are you aware of Mr. Levin ever seeking or applying for
23 a loan from Nova Bank other than to purchase Nova Financial
24 Holdings share?

25 A No, I am not aware.

Preve - Direct

182

1 Q Now, in your work for Mr. Levin, do you know how much Mr.
2 Levin was initially going to -- or let me ask you this. Did
3 Mr. Levin agree to buy a certain amount of Nova Financial
4 Holdings stock?

5 A Yes.

6 Q Do you remember how much that was?

7 A Approximately \$18 million worth.

8 Q And, did Mr. Bekkedam ever seek from you any part of that
9 before getting the full \$18 million?

10 A Yes.

11 Q And, how much was the initial amount Mr. Bekkedam sought?

12 A He was asking for approximately \$3 million.

13 Q All right. Now, when did Mr. Levin apply for a loan with
14 Nova Bank?

15 MR. EGAN: Objection, Your Honor. He's mentioned
16 two loans. Can we clarify which one he's talking about?

17 BY MR. IGNALL:

18 Q All right. With respect to the purchase of Nova
19 Financial Holdings stock, do you know when Mr. Levin first
20 applied for that loan?

21 A Well, there was not a formal application. The bank
22 requested certain documents be completed and financial data be
23 provided and we do so.

24 Q I would like you to look at what we've marked as Exhibit
25 40. What is Exhibit 40?

Preve - Direct

183

1 A Exhibit 40 is an email from Larry Rovin to me and to
2 Brian Hartline. The subject is George's financials, dated
3 June 29, 2009.

4 Q Do you know who Brian Hartline is?

5 A Brian Hartline was the president of Nova Bank in 2009.

6 Q And, what is the date of these emails?

7 A June 29, 2009.

8 MR. IGNALL: Government moves into evidence Exhibit
9 40.

10 MR. ENGLE: No objection.

11 MR. EGAN: No objection.

12 THE COURT: Admitted.

13 BY MR. IGNALL:

14 Q Now, Mr. Preve --

15 MR. IGNALL: May we publish to the jury, Your Honor?

16 THE COURT: Yes.

17 BY MR. IGNALL:

18 Q These emails are dated June 29th. Do you know when the
19 process for getting information to the bank for Mr. Levin's
20 loan started?

21 A Are you talking about the financial information or --

22 Q Yes. Communications with the bank in order to get the
23 information the bank was looking for. Was it before June
24 29th?

25 MR. EGAN: Objection. The last part was leading.

Preve - Direct

184

1 He's suggesting an answer.

2 THE COURT: All right.

3 BY MR. IGNALL:

4 Q Was it or was it not before June 29th, if you remember?

5 MR. ENGLE: Same objection.

6 THE COURT: Overruled.

7 A The financial information was requested before June 29th.

8 The documents evidencing the loan were sent on June 29th.

9 BY MR. IGNALL:

10 Q And, did you get a request for information from anyone
11 outside the bank in connection with this loan?

12 A Both Larry Rovin and Barry Bekkedam requested
13 information.

14 Q All right. If we look at the top of these emails, the
15 email from Mr. Rovin to you and Mr. Hartline, can you read the
16 first line?

17 A "Send to the office, Frank, these are very time
18 sensitive."

19 Q Did you understand whether this process was indeed time
20 sensitive?

21 A Yes, it had been so indicated by Nova Bank and by Larry
22 Rovin.

23 Q And, what was your understanding about why this was so
24 time sensitive?

25 A It was indicated to me that there was a deadline for

Preve - Direct

185

1 applying for TARP funding from the Federal Government.

2 Q And, who did you hear that from?

3 A I heard it from Barry Bekkedam, Larry Rovin and Brian
4 Hartline.

5 Q And, did you have any understanding what this TARP
6 program was?

7 A Only in a general sense that it was an effort by the
8 Government to recapitalize the banking system.

9 Q And, from your discussions with Mr. Rovin, Mr. Bekkedam
10 and Mr. Hartline, what did you understand the deadline was?

11 A The June 30th, 2009 date.

12 Q All right. If I could turn your attention to Exhibit
13 40A, just for the witness, please. What is Exhibit 40A, Mr.
14 Preve?

15 A It's an email from Brian Hartline to me and to Larry
16 Rovin with copies to Barry Bekkedam and Tom Patterson of Nova
17 Bank.

18 Q And, if we just look at the date and time of that email,
19 what is it?

20 A June 29th, 2009 at 4:16 p.m.

21 MR. IGNALL: The Government moves into evidence
22 Exhibit 40A.

23 MR. EGAN: No objection.

24 MR. ENGLE: No objection.

25 THE COURT: Admitted.

Preve - Direct

186

1 MR. IGNALL: May we publish it, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. IGNALL:

4 Q Could you just read the email, the top email, please.

5 A "We will need these executed and returned to Nova
6 tomorrow. Scanned images will work. The plan is to fund by
7 the end of day. We will send a package to your office so you
8 can monitor it's receipt. It should be there at earliest time
9 possible."

10 Q And, do you recall what it was Mr. Hartline was asking
11 you for here?

12 A It was a package of loan documents.

13 Q If I could turn your attention, just for the witness,
14 please, to Exhibit 40B. Do you recognize Exhibit 40B? Let's
15 just start at the top if we could, Agent Boyer.

16 A This is an email from me to Tom Patterson, Brian
17 Hartline, Larry Rovin, with a copy to Barry Bekkedam.

18 Q And, what is the subject?

19 A George's financials.

20 Q And, what is the date and time?

21 A June 29th, 2009 at 4:32 p.m.

22 Q And, does this include -- if we can scroll down, other
23 emails that were sent to you earlier?

24 A Yes, it does.

25 MR. IGNALL: All right. The Government moves into

Preve - Direct

187

1 evidence Exhibit 40B.

2 MR. EGAN: No objection.

3 MR. ENGLE: No objection.

4 THE COURT: Granted.

5 BY MR. IGNALL:

6 Q All right. If we can go to the -- Agent Boyer, blow up
7 the top half of the first page. All right. Now, actually, it
8 probably makes more sense to -- I'm sorry, let's go to the
9 second page, top of the second page. Do you see the email
10 there from 4:14 p.m.?

11 A Yes, sir.

12 Q Who wrote that email?

13 A It's an email from me to Brian Hartline and a copy -- and
14 Larry Rovin, a copy to Tom Patterson and Barry Bekkedam.

15 Q And, what are you asking there?

16 A I'm asking if anything that they are sending me in
17 overnight delivery has to be notarized.

18 Q And, did you get a response?

19 A Yes, I did.

20 Q What was the response you got?

21 A No, it did not have to be notarized.

22 Q Turn your attention to what we've marked as Exhibit 40C,
23 just for the witness, please. And, do you recognize Exhibit
24 40C? Let's just look at the top email.

25 A Yes. It's an email from Brian Hartline to me, Larry

Preve - Direct

188

1 Rovin, copy to Barry Bekkedam and Tom Patterson at -- June
2 29th, 2009 at 4:32 p.m.

3 Q And, what is the subject?

4 A George's financials.

5 Q And, does this document include some of the emails we've
6 already looked at as part of a string?

7 A Yes, it does.

8 MR. IGNALL: Government moves into evidence Exhibit
9 40C.

10 MR. EGAN: No objection.

11 MR. ENGLE: No objection.

12 THE COURT: Admitted.

13 MR. IGNALL: May it be published, Your Honor?

14 THE COURT: Granted.

15 BY MR. IGNALL:

16 Q All right. And, this top email, is Mr. Hartline
17 responding to an email that you wrote earlier?

18 A Yes, it is.

19 Q And, what was the email you wrote earlier? What did you
20 say or ask?

21 A I was asking if any of the documents they were
22 overnighting had to be notarized.

23 Q And, how did Mr. Hartline respond?

24 A He said, no, we are doing the loan on an unsecured basis.

25 Q Do you know what an "unsecured basis" means?

Preve - Direct

189

1 A Yes. It means a loan without collateral.

2 Q And, how much was this loan for?

3 A \$5 million.

4 Q Were you at all involved in the transfer of funds on this
5 loan?

6 A Yes.

7 Q All right. And, what was your involvement?

8 A I was asked by Nova Bank, when they -- to -- upon receipt
9 of the loan proceeds into George's personal account, to wire
10 those funds back to Nova Bank.

11 Q And, did you have any email communications about that?

12 A Yes.

13 Q All right. I'd like to turn your attention to what we've
14 marked as Exhibit 42 -- I'm sorry. Do you need a moment or
15 are you okay?

16 A I'm fine. Sorry.

17 Q Okay. If I can turn your attention to Exhibit 42,
18 please. Do you recognize Exhibit 42?

19 A Yes, that's an email from Tom Patterson to me, June 30th,
20 2009 at 11:15 a.m.

21 Q And, does this include, if you scroll down, any
22 additional emails in the string?

23 A Yes, it does.

24 Q And, do you recall getting this email from Mr. Patterson
25 on June 30th?

Preve - Direct

190

1 A Yes, I do.

2 MR. IGNALL: Government moves into evidence Exhibit
3 42.

4 MR. EGAN: No objection.

5 MR. ENGLE: No objection.

6 THE COURT: Admitted.

7 BY MR. IGNALL:

8 Q All right. If we could look at the bottom email, please,
9 on that first page. All right. Did you write this email?

10 A Yes, I did.

11 Q And, what information did you send Mr. Patterson in this
12 email?

13 A I was sending him George Levin's personal account
14 information for receipt of the loan proceeds.

15 Q And, why were you doing that?

16 A Because Nova had to transfer the -- had to give the loan
17 proceeds somewhere and we elected to have it sent to -- Mr.
18 Levin elected to have it sent to his personal account.

19 Q And, when did you get this email -- when did you send
20 this email to Mr. Patterson?

21 A June 30th, 2009 at 11:12 a.m.

22 Q Do you know what role, if any, Mr. Patterson had at the
23 bank?

24 A I don't have his precise title but I believe he was
25 senior credit officer.

Preve - Direct

191

1 Q And, did Mr. Patterson write back to you after you sent
2 that 11:12 a.m. email?

3 A Yes, he did.

4 Q And, at what time did he write back to you?

5 A At 11:15 a.m.

6 Q And, what did Mr. Patterson say to you at 11:15 a.m.?

7 A He says, "Frank, I'm going to wire the funds now. Can
8 you wire the funds back to Nova Bank," and gave me the account
9 number at Nova Bank.

10 Q And, why were you going to wire the funds back to Nova
11 Bank?

12 A The funds were to go into an escrow account in the name
13 of George Levin for the acquisition of Nova Bank stock.

14 Q I would like to turn your attention, just for the witness
15 now, to Exhibit 46. Do you recognize Exhibit 46?

16 A Exhibit 46 is an email from me to Mr. Patterson on June
17 30th, 2009 at 1:31 p.m.

18 Q And, does it involve -- include any other emails in the
19 string?

20 A Yes, it does.

21 MR. IGNALL: All right. The Government moves into
22 evidence Exhibit 46.

23 MR. EGAN: No objection.

24 THE COURT: Granted.

25 MR. IGNALL: May we publish it to the jury, Your

Preve - Direct

192

1 Honor?

2 THE COURT: Yes, sir.

3 BY MR. IGNALL:

4 Q Let me start at the bottom -- the bottom email there. Do
5 you recognize the bottom email all the way down? Is that an
6 email from you?

7 A Yes, it is. It's one we previously --

8 Q Okay. And, what is the time of that email?

9 A This email is at 11:12 a.m.

10 Q All right. Now, if we could scroll up, what's the next
11 email in the string in terms of -- time wise. Agent Boyer
12 will hopefully blow it up that we can see it.

13 A 12:0 -- I -- 12:0 -- 12:04 p.m.

14 Q And, who sent this email?

15 A From Tom Patterson at Nova Bank to me.

16 Q And, what did Mr. Patterson say to you at 12:04 p.m. on
17 June 30th?

18 A He says, "Frank, the wire has been sent and should be at
19 Gibraltar. Confirmed number is X. Please let me know when
20 the funds have been wired back. Thanks, Tom."

21 Q Did you respond to Mr. Patterson?

22 A Yes.

23 Q All right. We can go up to the top email. What is the
24 time of that top email?

25 A 1:31 p.m.

Preve - Direct

193

1 Q Did you do anything to check to see if any funds had
2 gotten to Mr. Levin's bank account before sending this email?

3 A Yes.

4 Q What did you do?

5 A I would have confirmed that we had a receipt from
6 Gibraltar Bank for the amount of the wire.

7 Q And, how long after confirming that receipt did you send
8 this email to Mr. Patterson?

9 A Almost instantaneous, I'm sure.

10 Q And, what time did you send this email to Mr. Patterson?

11 A 1:31 p.m.

12 Q And, what did you say to Mr. Patterson?

13 A "Got it. Sending it back in five minutes."

14 Q And, did you, in fact, send it back in five minutes?

15 A We sent it back promptly. I don't know whether it was
16 five minutes or not.

17 Q All right. Let me turn your attention to Exhibit 47,
18 just for the witness. Do you recognize Exhibit 47?

19 A Yes.

20 Q What is Exhibit 47?

21 A Exhibit 47 is an email from me to Paul McMahon and Susan
22 Levin, subject Levin wire.

23 Q And, who is Paul McMahon (phonetic)?

24 A Paul McMahon is the office manager -- personal office
25 manager for George Levin.

Preve - Direct

194

1 Q And, what is the date and time of this email?

2 A It's June 30th, 2009 at 1:34 p.m.

3 MR. IGNALL: Government moves into evidence Exhibit
4 47.

5 MR. EGAN: No objection.

6 MR. ENGLE: No objection.

7 THE COURT: Admitted.

8 MR. IGNALL: May we publish to the jury?

9 THE COURT: Granted.

10 BY MR. IGNALL:

11 Q And, what are you saying to Mr. McMahon in this email?

12 A "Please wire \$5 million from George Levin account at
13 Gibraltar to Nova Bank."

14 Q And, how many minutes -- if we -- Agent Boyer, is it
15 possible to put 47 and 46 side by side?

16 MR. EGAN: Stipulate to how many minutes it was,
17 Your Honor.

18 THE COURT: All right. And, that is?

19 MR. IGNALL: I believe it is three minutes. Let me
20 double check.

21 MR. EGAN: Three.

22 MR. ENGLE: Three sounds good.

23 MR. IGNALL: All right. So we'll stipulate that
24 this email was three minutes after you -- after Mr. Preve
25 emailed Mr. Patterson, sending it back in five minutes.

Preve - Direct

195

1 BY MR. IGNALL:

2 Q So, from your dealings with Nova Bank, was this loan
3 ultimately funded? Did you get the \$5 million into Mr.
4 Levin's bank account?

5 A Yes, we did.

6 Q Was there any security or collateral connected with this
7 loan?

8 MR. ENGLE: Objection, asked and answered.

9 MR. IGNALL: I don't think we asked how it
10 ultimately ended up.

11 THE COURT: All right. Overruled.

12 A No.

13 BY MR. IGNALL:

14 Q Did you have any phone calls with Mr. Bekkedam regarding
15 other people investing in Nova Bank?

16 A There were email discussions about Mr. Bekkedam raising
17 additional capital for Nova Bank.

18 MR. ENGLE: Objection, non-responsive. Move to
19 strike.

20 THE COURT: Sustained and stricken.

21 BY MR. IGNALL:

22 Q All right. Did you have any communications of any kind
23 with Mr. Bekkedam about him raising money for Nova Bank?

24 A There were emails from Mr. Bekkedam stating that he was
25 raising funds from other investors as well to recapitalize

Preve - Direct

196

1 Nova Bank.

2 Q After June 30th, did you have an opportunity to review
3 any financial information with respect to Nova Bank?

4 A The initial review of financial information was right at
5 the last week in June, right before the investment was made.

6 Q After June 30, did you have any requests from Mr.
7 Bekkedam for Mr. Levin to invest more than the money he had
8 just borrowed from Nova Bank?

9 A Yes.

10 Q And, did you recommend to Mr. Levin whether that was a
11 good idea or not?

12 A There were a number of discussions between Mr. Levin and
13 myself about the quality of the investment in Nova Bank.

14 MR. ENGLE: Objection, Your Honor. The response
15 calls for hearsay.

16 THE COURT: From Mr. Levin. Sustained.

17 BY MR. IGNALL:

18 Q Let me ask it slightly -- let me try it again. Without
19 giving the substance, did you and Mr. Levin ever discuss
20 whether it was a good financial idea for Mr. Levin to invest
21 additional money? Without going into -- yes or no?

22 A Yes.

23 Q And, did you ever provide any advice to Mr. Levin about
24 that?

25 A Mr. Levin had his own consult.

Preve - Direct

197

1 Q Okay. That's good enough. Thank you. Do you know if,
2 in connection with possibly putting in as much as \$18 million
3 into Nova Bank, whether Mr. Levin had to do anything with bank
4 regulators?

5 MR. ENGLE: Objection as leading.

6 THE COURT: Sustained.

7 BY MR. IGNALL:

8 Q Are you familiar with whether or not Mr. Levin ever had
9 to make any application to bank regulators?

10 A Nova Bank sent us an application. I believe it was a
11 Federal Reserve application.

12 Q And, do you remember what the purpose of that application
13 was?

14 A To be approved by the regulators for acquisition of \$18
15 million worth of stock in Nova.

16 Q Now, as of June 30th, were Mr. Bekkedam and Mr. Levin, as
17 far as you knew from working for Mr. Levin, still involved in
18 getting new investors into the Banyon Income Fund?

19 A Yes.

20 Q So, let's go back to the application. If I could turn
21 your attention to Exhibit 64. Now, let me take that back.

22 MR. IGNALL: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. IGNALL:

25 Q This has already been admitted. Let me ask you to flip

Preve - Direct

198

1 through that, because my question is going to be if you
2 recognize any or all of that?

3 A Yes, I do.

4 Q And, what is this document?

5 A This is an application to invest in a commercial bank,
6 they call it a Change of Control document. It's got
7 biographical information and financial information on the
8 would be investor.

9 Q And, were you involved at all in preparing any part of
10 this document?

11 A I'm sure I prepared the financial information.

12 Q And, did you get any -- did anyone at Nova Bank
13 participate in preparing any of this?

14 A Most of it came to us already filled out.

15 Q And, what parts were already filled out as best you
16 recall?

17 A The Change of Control document was already filled out.
18 And, on the biographical information, all the check marks were
19 already made or most of them were already made.

20 Q Now, if I can turn your attention to what looks to be
21 about the eighth page of this document.

22 MR. IGNALL: And, we can publish this to the jury,
23 if we can.

24 Q It should be the fin -- it says, "Financial Report" at
25 the top, it's "N-1080" at the bottom. I may have the wrong

Preve - Direct

199

1 number of pages there. It could be page 19, I'm sorry. Do
2 you recognize that as page 19? It's on the screen now too.
3 It might be easier.

4 A It's a financial statement of Mr. Levin.

5 Q Did you have any part in preparing this?

6 A I prepared the personal financial statement from which
7 this information was taken.

8 Q And, who did you provide that statement to?

9 A I would have provided it to Nova Bank.

10 Q And, if we look at Mr. Levin's assets, at that point were
11 you familiar with Mr. Levin's financial situation?

12 A Yes.

13 Q And, what's the date of this financial statement?

14 A March 31st, 2009.

15 Q Okay. So does this financial statement reflect a loan
16 from Nova Bank?

17 A No.

18 Q And, if we look at proprietary interest in other
19 securities submitted in \$88 million, do you know what that was
20 made up of as of March 31st, 2009?

21 A That would have been primarily Mr. Levin's investment in
22 operating companies including the Banyon entities.

23 Q If I could turn your attention to I believe it's Exhibit
24 28 for a moment. I believe this has been admitted. Are you
25 familiar with something called DVFG?

Preve - Direct

200

1 A Yes.

2 Q As of the time Mr. Levin applied for the loan from Nova
3 Bank, did you have any understanding about whether Nova
4 Financial Holdings had any relationship with DVFG?

5 A Mr. Bekkedam told us that DF -- DVFG was going to be
6 consolidated into Nova Bank. Into the Holding Company, I'm
7 sorry. Nova Financial Holding.

8 Q Now, with respect to the Change in Control application,
9 do you know whether any State or Federal Regulator had any
10 questions about that?

11 A Yes.

12 Q And, were you at all involved in answering any of those
13 questions?

14 A Yes.

15 Q Let me turn your attention to what we've marked as
16 Exhibit 72, just for the witness, please. What was your
17 involvement in answering any questions? Did anyone contact
18 you about getting information to State Regulators or Federal
19 Regulators?

20 A Yes.

21 Q And, who contacted you?

22 A I was contacted by Kim Hartline. I was contacted by
23 Larry Rovin. I was contacted by Barry Bekkedam and contacted
24 by Brian Hartline about providing information. I also had a
25 direct phone call from the Federal Reserve.

Preve - Direct

201

1 Q All right. Let me turn your attention now to what we've
2 marked as Exhibit 73, for just the witness, please. Do you
3 recognize Exhibit 73?

4 A Yes.

5 Q And, what is Exhibit 73?

6 A Exhibit 73 is an email from Larry Rovin to me dated
7 August 25th, 2009, subject is Levin.

8 Q And, are there other emails attached in the string that
9 were part of what you got on August 25th, 2009?

10 A Yes.

11 MR. IGNALL: Government moves into evidence Exhibit
12 73.

13 MR. ENGLE: May we see you at sidebar, Your Honor?

14 THE COURT: Yes, sir.

15 (Sidebar begins)

16 MR. ENGLE: I just want to make sure that -- Your
17 Honor, the top part of this email, should be the last email on
18 the string, is an email communication simply between Larry
19 Rovin and Mr. Preve. It's a statement -- out-of-court
20 statement made by Mr. Rovin. It's what Mr. Rovin had to say.
21 It's hearsay.

22 THE COURT: Is it being offered for the truth?

23 MR. IGNALL: Well, yes and no.

24 MR. ENGLE: That's hard.

25 MR. IGNALL: One, it's for the fact that Mr. Rovin

Preve - Direct

202

1 is seeking information. But, two, it is clear from the text
2 of the email that Mr. Rovin is acting as Mr. Bekkedam's agent.
3 Therefore, it's certainly, under 801D, admissible against Mr.
4 Bekkedam.

5 THE COURT: Do you contest that it's an agency
6 (inaudible)?.

7 MR. EGAN: They haven't laid it.

8 MR. ENGLE: They haven't laid that foundation.

9 MR. IGNALL: (Inaudible) did it earlier, but I'll do
10 it right now. The text email --

11 THE COURT: It's five after four. So do you want to
12 take some time prep that so maybe there won't even be an
13 objection on Monday?

14 MR. ENGLE: Yes, Your Honor.

15 THE COURT: Pardon?

16 MR. ENGLE: Yes, Your Honor.

17 UNIDENTIFIED SPEAKER: But I think if it was more
18 clearly established that Larry Rovin is the attorney for
19 Ballamor --

20 THE COURT: You'll have time to work on all that.

21 MR. IGNALL: Right. That's one thing.

22 THE COURT: Bring it on Monday morning.

23 MR. IGNALL: We don't think we're there yet.

24 MR. ENGLE: Thank you, Your Honor.

25 MR. IGNALL: All right. Thank you.

Preve - Direct

203

1 (Sidebar ends)

2 THE COURT: All right. Members of the jury, I've
3 got some good news and some bad news. The bad news is it's
4 going to rain tomorrow when you're off.

5 Please do not discuss the testimony that had been
6 elicited thus far in the trial. Please don't do any
7 investigation on your own or conduct any kind of research or
8 read any articles or listen to any broadcast about the case.

9 Have a pleasant few days and we'll see you on Monday
10 morning at 9:15. Thank you so much.

11 THE CLERK: All rise.

12 THE COURT: Thank you.

13 (Jury exits at 4:05:34 p.m.)

14 THE COURT: All right, I'll see you all on Monday.

15 UNIDENTIFIED SPEAKER: Your Honor?

16 THE COURT: Yes, sir.

17 UNIDENTIFIED SPEAKER: How do you plan to deal with
18 one juror who --

19 THE COURT: So far so good, remainder of this
20 afternoon.

21 UNIDENTIFIED SPEAKER: Okay, good. I don't think --

22 THE COURT: Thank you.

23 COUNSEL: Thank you, Your Honor.

24 THE COURT: Thank you all.

25 COUNSEL: Have a nice weekend.

1 THE COURT: You too.

2 (Proceedings concluded at 4:04:35 p.m.)

3 * * * * *

4 C E R T I F I C A T I O N

5 We, Roxanne Galanti and Diana Doman, court approved
6 transcribers, certify that the foregoing is a correct
7 transcript from the official digital audio recording of the
8 proceedings in the above-entitled matter.

9
10 **Roxanne Galanti** Digitally signed by Roxanne Galanti
DN: cn=Roxanne Galanti, o, ou,
email=dianadoman@comcast.net, c=US
Date: 2016.04.11 15:53:22 -04'00'

11 ROXANNE GALANTI

DATE

12 **Diana Doman** Digitally signed by Diana Doman
DN: cn=Diana Doman, o, ou,
email=dianadoman@comcast.net, c=US
Date: 2016.04.11 15:53:05 -04'00'

13
14 DIANA DOMAN

15 DIANA DOMAN TRANSCRIBING, LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	14-CR-0548
)	
vs.)	
)	
BRIAN HARTLINE and)	
BARRY BEKKEDAM,)	
	)	Philadelphia, PA
Defendants.	)	April 4, 2016
	)	9:38 a.m.

TRANSCRIPT OF EXCEPT OF TRIAL
BEFORE THE HONORABLE C. DARNELL JONES, II and JURY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: DAVID J. IGNALL, ESQUIRE
 JENNIFER CHUN BARRY, ESQUIRE
 ASSISTANT UNITED STATES ATTORNEYS
 U.S. Attorneys Office
 615 Chestnut Street, Suite 1250
 Philadelphia, PA 19106

For the Defendant: PATRICK J. EGAN, ESQUIRE
Brian Hartline FOX ROTHSCHILD LLP
 2000 Market Street, 10th Floor
 Philadelphia, PA 19107

For the Defendant: MICHAEL J. ENGLE, ESQUIRE
Barry Bekkedam GREENBLATT, PIERCE, ENGLE,
 FUNT & FLORES
 123 Broad Street, Suite 2500
 Philadelphia, PA 19109

RUSSELL D. DUNCAN, ESQUIRE
JOEL D. SCHWARTZ, ESQUIRE
SHULMAN, ROGERS, GANDAL,
PORDY & ECKER, PA
12505 Park Potomac Avenue, 6th Floor
Potomac, MD 20854

Audio Operator: CARL HAUGER

Transcriber:

DIANA DOMAN TRANSCRIBING
P. O. Box 129
Gibbsboro, NJ 08026-0129

Telephone: (856) 435-7172
Fax: (856) 435-7124
E-mail: dianadoman@comcast.net

Proceedings recorded by electronic sound recording; transcript
produced by transcription service.

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
------------------	---------------	--------------	-----------------	----------------

FOR THE GOVERNMENT:

Frank Preve	13 (Ign)	47 (Ega)	122 (Ign)	129 (Ega)
		92 (Dun)		
Joseph Madiany	134 (Bar)	160 (Ega)	196 (Bar)	200 (Ega)
		176 (Eng)		201 (Eng)

EXHIBITS:

	<u>I.D.</u>	<u>Admitted</u>
--	-------------	-----------------

G-40	E-mail, Rovin to Preve, 6/29/09	prior	
G-41	Nova Bank Loan Committee Minutes, 6/30/09	prior	
G-41A	List of loans approved by loan committee	prior	
G-43	Nova Risk Assessment Summary, G. Levin	prior	
G-52	Gibraltar bank statement ending 6/30/09	prior	13
G-63	Ltr. application from Nova Bank	prior	15
G-74	E-mail, Levin to Bekkedam	prior	27
G-79	E-mail, Rovin to Preve, 9/4/09	prior	28
G-81	E-mail, Preve to Hartline, 9/8/09	prior	29
G-82	E-mail, Hartline to Federal Reserve	prior	31
G-102	E-mail, Bekkedam to Preve, 10/21/09	prior	33
G-109	Nova Risk Assessment Summary, A. Bonomo	prior	155
G-106	E-mail, Bekkedam to Preve, 10/21/09	Prior	36
G-110	E-mail, Rovin to Preve, 10/22/09	prior	34
G-114	E-mail, Bekkedam to Preve, 10/23/09	prior	38
G-117	Nova Loan Committee Minutes, 10/27/09	prior	157

4

1	G-117A Nova Loan Committee Minutes, 10/20/09	prior	158
2	G-118 E-mail, Madiany to Patterson, 10/6/09	prior	151
3	G-124 E-mail, Patterson to Preve	prior	43
4	G-143 Nova Risk Assessment Schedule, C. Gallab	prior	158
5	G-170 E-mail, Bekkedam to Hartline, 2/6/10	prior	45

6

7 ***sidebar very low and difficult to hear**

8

9

10

11

12

13

14

15

16

17

18

19

(Colloquy)

5

1 (Proceedings commence at 9:38 a.m.)

2 MR. DUNCAN: Your Honor, I have one preliminary
3 issue.

4 THE COURT: I think I've covered this with Mr. Ignall
5 but, and I think the Government has agreed to this, I just
6 wanted to make sure that this witness doesn't mention
7 Bekkedam's divorce. It's in one of the e-mails that was
8 entered into evidence but not published, and I believe Mr.
9 Ignall didn't publish it because I had asked him to redact our
10 that portion. I just wanted to make sure this witness isn't
11 going to volunteer that, though that is part of the witness'
12 potential testimony.

13 THE COURT: All right. So you've told him not to --

14 MR. IGNALL: And I'm not intending to ask any
15 question where it comes up. I don't know --

16 THE COURT: You're welcome to speak to him aside and
17 tell him not to mention it.

18 MR. IGNALL: I've already told him that I didn't want
19 him to volunteer that.

20 THE COURT: All right.

21 MR. IGNALL: And if I could ask, Mr. Duncan, which
22 exhibit that was just so I can make sure we have it.

23 MR. DUNCAN: I think it was 61. It's your exhibit.
24 I don't have it right in front of me.

25 MR. IGNALL: Okay.

(Colloquy)

6

1 MR. DUNCAN: But I'm happy -- and I think you
2 deliberately did not publish it, which I appreciate.

3 MR. IGNALL: Okay.

4 MR. DUNCAN: Because it had that word in there.

5 THE COURT: And Mr. Ignall, do you have a copy, a
6 hard copy of that memo? And did you give it to counsel?

7 MR. IGNALL: I did give it to counsel. And may I
8 approach, Your Honor? (Pause)

9 THE COURT: Yes, sir. All right, counsel, is there
10 any need to have any argument on the agency issue?

11 MR. SCHWARTZ: Your Honor, Mr. Nelson (phonetic) gave
12 this to me this morning. I have some brief points to make.
13 I'd like to make the brief points and then have -- maybe go
14 outside to look for a case or two to help.

15 THE COURT: Well let me just ask first of all, is
16 there any issue that this directly impacts?

17 MR. IGNALL: I don't know whether it does. It came
18 up on Thursday with respect to Exhibit, I believe it's 73 that
19 Mr. Rovin had sent to Mr. Preve and I had at sidebar said that
20 we were not trying to introduce it as a co-conspirator
21 statement under 801(d)(2)(e), but as a general proposition I
22 said that there are certain statements we would want to
23 introduce on an agency theory under Section (c) or (d). So
24 that's something I wanted to provide the Court and counsel with
25 the authority if it should come up again with respect to

(Colloquy)

7

1 whether Mr. Rovin, possibly the bank employee, someone acting
2 at the direction or at the employment of one of the defendants.

3 THE COURT: Within the scope of the agency and the
4 relationship. I understand that. Is there any issue that I'm
5 not hearing or that needs to be raised in limine; that's all I
6 want to know. It's fundamental in terms of agency.

7 MS. SCHWARTZ: I think so, Your Honor. At least as
8 part of this applies, or as the Government's trying to use this
9 through Mr. Rovin. The first is that I believe that the
10 evidence is planning to introduce this way, although I won't
11 know until we hear it, is subject to agency relationship not
12 between Mr. Rovin and Mr. Bekkedam, but between Mr. Rovin and
13 Ballamor. And Ballamor is not on trial here, and this is not a
14 case like the food, drug and cosmetic act where the responsible
15 corporate officer doctrine clause. And so you can not
16 attribute statements of a company, either directly or by an
17 agent, to an individual. If the company were on trial, that
18 might be a different story. The company's not charged here;
19 Mr. Bekkedam is. Essentially Mr. -- and I'm guessing again
20 about what evidence Mr. Ignall is going to produce, but Mr.
21 Ignall is trying to say, Mr. Rovin, you made a statement on
22 behalf of Ballamor for which you are counsel, acting as counsel
23 for Ballamor. And then Mr. Ignall is saying, use that or
24 attribute that to Barry Bekkedam. This is not a responsible
25 corporate officer doctrine case, and therefore it can't be used

(Colloquy)

8

1 against Mr. Bekkedam. And so essentially there's a triangle
2 rather than a straight line that's involved here.

3 The second point is that even if the statement itself
4 is not an attorney client privilege communication, the
5 Government has to prove the agency relationship to establish
6 the authority between either Mr. Bekkedam and Ballamor and Mr.
7 Rovin. And to do that, that may elicit communications, and
8 that was one thing we addressed before. Minimally I would
9 suggest to the Court respectfully that the witness through whom
10 this is going to be used, presumably Mr. Rovin, make this voir
11 dire on questions about authority outside the presence of the
12 jury to see if they can establish, the Government can establish
13 authority without breaching the attorney-client privilege.

14 THE COURT: Do you have a problem with that, counsel?

15 MR. IGNALL: I don't have a problem with that. And
16 with respect to this witness --

17 THE COURT: You say you do or you don't?

18 MR. IGNALL: I don't have a problem with that, Your
19 Honor. And I think we can establish, with respect to Mr.
20 Rovin, the agency relationship under Subsection (c) without Mr.
21 Rovin's testimony, as I believe we actually already have
22 through Mr. Preve and his interactions with Mr. Rovin on behalf
23 of Mr. Bekkedam with respect to specific items. But I can --

24 THE COURT: ON behalf of Mr. Bekkedam or on behalf of
25 Ballamor?

(Colloquy)

9

1 MR. IGNALL: On behalf of Mr. Bekkedam.

2 THE COURT: All right.

3 MR. SCHWARTZ: Well if I could just have the lunch
4 hour to see if, about that triangle.

5 THE COURT: Sure. I assume it won't be coming up
6 before then.

7 MR. IGNALL: The only issue was I believe there's an
8 objection to part of Exhibit 73. I don't think there's
9 anything objectionable to the fact that Mr. Rovin sent
10 something to Mr. Preve. There's no truth of the matter
11 asserted in that. What I think the e-mail said that I believe
12 Mr. Engle objected to, it said something to the effect of, at
13 Barry's request, please find the following. So I think the
14 truth of why he was doing it is something that would be
15 admissible under an agency theory.

16 MR. SCHWARTZ: Only if the Barry there is actually at
17 Ballamor's request because if Mr. Rovin was acting as
18 Ballamor's --

19 THE COURT: Well again, we'll in limine that in the
20 event we need to do that. I don't know. It's already done.

21 MR. IGNALL: Well there are two issues here. In
22 terms of the employment agency, Mr. Schwartz may be right about
23 that in terms of Mr. Rovin's role as working for Ballamor. So
24 therefore it would only be things that he did with the consent
25 or at the direction of Mr. Bekkedam that qualifies under

(Colloquy)

10

1 Subsection (c). With respect to bank employees, I think
2 Subsection (d) may apply more obviously. But I think with
3 respect to Exhibit 73, I think the circumstantial evidence is
4 sufficient to show that indeed Mr. Rovin did send this e-mail
5 at the direction of Mr. Bekkedam.

6 MR. SCHWARTZ: Bekkedam the entity, Bekkedam the
7 person. Bekkedam the person on trial, Bekkedam as Ballamor not
8 on trial.

9 MR. IGNALL: I think that's a distinction without a
10 difference here.

11 THE COURT: It's not necessarily, but I'm not certain
12 at this point whether the evidence came in or is to come in
13 directly from Mr. Bekkedam or from Ballamor.

14 MR. IGNALL: This is evidence -- the evidence that
15 we're talking about is an e-mail that Mr. Rovin sent to Mr.
16 Preve. The evidence has shown whether it's Mr. Rovin as an
17 employee of Ballamor, as an employee of MR. Bekkedam, it
18 doesn't matter. He's done something at the direction of Mr.
19 Bekkedam, whether he's his boss at Ballamor, or his good
20 friend, his client, and he's doing it with the consent of Mr.
21 Bekkedam.

22 THE COURT: If you are asserting that it is directly
23 from the mouth of Mr. Bekkedam, --

24 MR. IGNALL: No, I'm saying that it's --

25 THE COURT: -- as a direction when you say that?

(Colloquy)

11

1 MR. IGNALL: What I'm saying is -- can we bring up
2 Exhibit 73? It might be easier to put it on the screen, just
3 use this as an example I think. May I approach?

4 THE COURT: Sure.

5 I think it speaks for itself. He says, Barry asked
6 me to.

7 MR. IGNALL: It does, and I think under Borgelais the
8 Court may consider that but can't consider that alone
9 necessarily. I think Borgelais leaves that question open, but
10 for our purposes let's assume that -- I believe this witness
11 already testified about his relationship with Mr. Rovin that is
12 more than enough for the Court to find by a preponderance that
13 this was with the consent or at the direction of Mr. Bekkedam.

14 THE COURT: Mr. Schwartz?

15 MR. SCHWARTZ: Two things, Your Honor, if I may.
16 First of all, the Government has not established that the work
17 by Mr. Rovin was done as his counsel for Ballamor or as his
18 counsel for Bekkedam. And the important thing here is if
19 Ballamor is joining this, then unless there's a responsible
20 corporate officer doctrine here, there's not criminal activity
21 by Mr. Bekkedam.

22 Second, or more important, or preliminary, the
23 Government -- because I guess it couldn't -- couldn't lay the
24 foundation necessary to establish the agency relationship
25 through Mr. Preve. The person can establish the agency

(Colloquy)

12

1 relationship that says Larry is an agent for Barry, or for
2 Bekkedam needs to be established by someone with knowledge. I
3 don't think Mr. Preve has sufficient knowledge. For one thing,
4 for example, he couldn't say whether Preve or Mr. Rovin was
5 acting as counsel for Ballamor as the bottom of the exhibit
6 says or as counsel for Mr. Bekkedam. The only person with
7 knowledge who can do that is either Mr. Rovin or Mr. Bekkedam.
8 Mr. Bekkedam's not talking. And we can go back to the whole
9 thing about how Mr. Rovin shouldn't either, but somebody has to
10 establish that this is who I'm speaking for. This is an
11 ambiguous document. It certainly raises the question, even
12 more clearly than my argument, that this could be Ballamor
13 talking because he's saying, Larry Rovin, managing director and
14 general counsel for Ballamor.

15 MR. IGNALL: Again, I think it's a distinction
16 without a difference. The question is just is this a statement
17 that was made either at the direction of Mr. Bekkedam or with
18 his consent? It doesn't matter whether he's asking -- what
19 happens to Rovin is wearing. I'm not aware of any authority
20 for that, that if Mr. Bekkedam asked Mr. Rovin to communicate
21 with Mr. Preve, what Mr. Rovin says is admissible against MR.
22 Bekkedam, regardless of why --

23 THE COURT: All right. We'll go on. We'll deal with
24 it.

25 MR. IGNALL: Are we ready for Mr. Preve?

Preve - Direct (Ign)

13

1 THE COURT: Everyone ready?

2 MR. DUNCAN: Yes, Your Honor.

3 MR. SCHWARTZ: Yes.

4 THE COURT: Okay. Thank you.

5 THE COURT: Good morning, sir. Sir, you remain under
6 oath. You may proceed.

7 THE DEPUTY: All rise.

8 (The jurors enter the courtroom.)

9 THE DEPUTY: Court is now in session. The Honorable
10 C. Darnell Jones, II presiding.

11 THE COURT: Good morning, good morning, welcome back.
12 You may seated. Thank you. You may proceed.

13 MR. IGNALL: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. IGNALL:

16 Q Let me go back to something we talked about on Thursday,
17 Mr. Preve. As part of your job working for Mr. Levin, did you
18 ever review his bank statements?

19 A Bank statements?

20 Q Statements from any bank where Mr. Levin had an account;
21 is that part of your job?

22 A Yes.

23 Q If I could turn your attention to what we've marked as
24 Exhibit 52, do you recognize Exhibit 52?

25 A Yes, I do.

Preve - Direct (Ign)

14

1 Q And what is Exhibit 52?

2 A Exhibit 52 is a copy of a statement from Gibraltar Bank in
3 the name of George and Gayla Sue Levin.

4 Q And for what time period? Or the period that it ends?

5 A This would have ended as of June 30, 2009.

6 MR. IGNALL: At this point the Government moves into
7 evidence Exhibit 52.

8 MR. DUNCAN: No objection.

9 MS. SCHWARTZ: No objection.

10 THE COURT: Admitted.

11 MR. IGNALL: And may we publish to the jury, Your
12 Honor?

13 THE COURT: Yes.

14 BY MR. IGNALL:

15 Q And if we look at that first page near the bottom where it
16 talks about deposits and credits, do you see where it says at
17 the bottom 6-30? What does it say there?

18 A 6-30 wire transferred in domestic five million.

19 Q Do you know what that is?

20 A Yes I do.

21 Q What is that?

22 A That is the amount of the loan proceeds from Nova Bank to
23 George Levin personally.

24 Q If we turn to the second page, about two-thirds of the way
25 down the page, do you see where it says wire transfer out?

Preve - Direct (Ign)

15

1 There are two, but the first one on June 30th, do you see what
2 that is?

3 A Yes.

4 Q What is that?

5 A That is a wire transfer out domestic of \$5 million. That
6 was \$5 million that was sent to the escrow account at Nova Bank
7 in the name of George Levin.

8 Q Thank you. We were talking I think when we left on
9 Thursday about your involvement with state and federal
10 regulators in terms of getting information regarding Mr. Levin.
11 Do you recall those questions?

12 A Vaguely.

13 Q Do you remember whether you got information from Nova Bank
14 in terms of being able to respond to state or federal
15 regulators?

16 A Yes I did.

17 Q Let me turn your attention, this is just for the witness
18 right now, to Exhibit 53. Do you recognize Exhibit 53?

19 A Yes I do.

20 Q And what is Exhibit 53?

21 A This exhibit is a letter, a draft of a letter from George
22 Levin to the board of directors of Nova Financial Holdings
23 indicating his interest in seeking approval for 1.36 million
24 shares of common stock of Nova.

25 A Did you see this document while you were working for Mr.

Preve - Direct (Ign)

16

1 Levin?

2 A I do not recall it.

3 Q If we could pull up Exhibit 63 please. And again, this is
4 just for the witness. It's voluminous, Your Honor, I'm going
5 to approach with a paper copy to make it a little bit easier
6 for the witness. If you could flip through Exhibit 63 please.

7 May I have a moment with counsel, Your Honor?

8 THE COURT: Go right ahead.

9 MR. IGNALL: Your Honor, by agreement I'd like to
10 move Exhibit 63 into evidence at this point.

11 MR. DUNCAN: No objection.

12 MR. SCHWARTZ: No objection, Your Honor.

13 THE COURT: Admitted.

14 BY MR. IGNALL:

15 Q All right, Mr. Preve, do you recognize or remember seeing
16 any part of Exhibit 63?

17 A Yes.

18 Q What parts do you remember seeing?

19 A I think at some point I've seen all of it, but this is not
20 the full application, as there are a couple of documents from
21 what I recall having seen.

22 Q And what is this document?

23 MR. IGNALL: May I publish to the jury, Your Honor?

24 MR. DUNCAN: No objection.

25 THE COURT: Granted.

Preve - Direct (Ign)

17

1 THE WITNESS: The cover letter is a letter from Nova
2 Financial Holdings to the Pennsylvania Department of Banking
3 indicating that George Levin has invested five million of the
4 proposed \$18 million in Nova stock. And it outlines what is
5 included and attached to the letter.

6 BY MR. IGNALL:

7 Q And is there information -- if we turn to, it's probably
8 the fourth page of this document, do you see that letter?

9 A This is the letter from George Levin to the Department of
10 Banking dated June 30, 2009.

11 Q Did you have any part in preparing this letter?

12 A No.

13 Q Do you know who did?

14 A I assume it was --

15 MR. EGAN: Objection.

16 MR. ENGLE: Objection.

17 THE COURT: Sustained.

18 BY MR. IGNALL:

19 Q Let me ask it differently. Do you know who did?

20 MR. EGAN: Objection; same question.

21 THE COURT: Well I was actually sustaining it to the
22 probably answer with what he was assuming. Now if there's
23 going to be any different answer, --

24 MR. IGNALL: I'm going to ask basis for knowledge to
25 see if we can get it.

Preve - Direct (Ign)

18

1 THE COURT: All right. Overruled.

2 THE WITNESS: It came from Nova Bank.

3 BY MR. IGNALL:

4 Q Did you get the letter filled out from someone at Nova
5 Bank?

6 A Yes we did.

7 Q Okay. And with respect to item (d), do you know what the
8 question -- let's go to page 5 and look at that for a moment.
9 Do you see where it says item (d)?

10 A Yes.

11 Q Let's actually start at the top. I'm sorry. Can you read
12 -- see at the top where there are different items and it says,
13 the following items are to be answered in a letter addressed to
14 the Department of Banking? Do you see that?

15 A Yes, sir.

16 Q And is the letter we just looked at, is that -- let me ask
17 it differently. The answers that are in that letter we just
18 talked about, did you prepare those answers?

19 A No, I did not.

20 Q Okay. Did you get the letter filled out from someone
21 else?

22 A Yes.

23 Q And do you remember from whom or from where?

24 A It came from Nova Bank.

25 Q Okay. And then what's item (d) asking for?

Preve - Direct (Ign)

19

1 A Item (d) is asking for the source and amount of funds or
2 other consideration.

3 Q And what's it say below that?

4 A State the source and amount of funds or other
5 considerations used or to be used in making the purchases, and
6 if any part of the purchase price or proposed purchase price is
7 represented by funds or other consideration borrowed or
8 otherwise obtained for the purpose of acquiring, holding or
9 trading the shares, give a description of the transaction and
10 names of the parties thereto.

11 Q And then if we go back to the previous page, item (d),
12 what's the answer there?

13 A "(d) It is the applicant's intention to pay the
14 approximately 18 million purchase price with funds currently on
15 deposit in various financial institutions; however, a portion
16 of the purchase price may come from other sources."

17 Q And if we go back to the first page, what's the date of
18 this letter going to the Pennsylvania Department of Banking?

19 A On the first page that letter is July 21, 2009.

20 Q Thank you. If I could turn your attention back to Exhibit
21 73, and I don't believe this has been admitted yet. Do you
22 remember having conversations with anyone outside of Nova Bank
23 with respect to answering questions from either state or
24 federal banking regulators?

25 A I believe that both --

Preve - Direct (Ign)

20

1 MR. ENGLE: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MR. IGNALL:

4 Q Do you recall if you had any communications of any kind?

5 A Yes.

6 Q And what communications do you recall having?

7 A I recall that both Mr. Bekkedam and Mr. Rovin asked me to
8 either follow-up on missing information or to provide missing
9 information.

10 Q And if I could turn your attention to Exhibit 73, do you
11 recognize Exhibit 73?

12 A Yes I do.

13 Q And what is Exhibit 73?

14 A Exhibit 73's top e-mail is from Larry Rovin to me dated
15 Tuesday, August 25, 2009 asking for follow-up on the Nova
16 transaction.

17 MR. IGNALL: The Government moves into evidence
18 Exhibit 73.

19 MR. ENGLE: Objection, Your Honor, calls for hearsay.

20 THE COURT: May I see it, please?

21 MR. IGNALL: Yes.

22 (Sidebar conference)

23 MR. IGNALL: That's what we looked at earlier, Your
24 Honor.

25 THE COURT: Could you enlarge on my screen only

Preve - Direct (Ign)

21

1 please? Okay Mr. Engle, what's your objection?

2 MR. ENGLE: My objection, Your Honor, is that as
3 we're looking at this, this is an out-of-court -- (these are --
4 must be somebody else out there) this is an out-of-court
5 statement --

6 THE COURT: You can speak loud enough for everyone
7 else to hear you.

8 MR. ENGLE: Okay. It's an out-of-court statement by
9 -- it's Mr. Rovin's out-of-court statement by an individual
10 who's not in court testifying to it as being offered for the
11 truth of the matter asserted. I understand the Government is
12 offering it as an agency statement. The fact that it says
13 Barry asked me, it's from Mr. Rovin indicating not as counsel
14 to Barry Bekkedam personally as his personal attorney. It's
15 sent from his Ballamor Capital e-mail indicating in his
16 capacity as the managing director and general counsel at
17 Ballamor, of which Mr. Bekkedam was the chairman and CEO. He
18 was an agent of Ballamor himself. One agent's statement to
19 another agent of the entity that is not on trial here does not
20 constitute a basis for an exception to the hearsay rule.

21 THE COURT: Why not?

22 MR. ENGLE: Because there's no -- the agent that he's
23 making the statement on behalf of is not a party to this
24 action. If Ballamor was charged, totally different issue. But
25 Ballamor is not; Ballamor is not a party to this. So he's

Preve - Direct (Ign)

22

1 making the statement as an agent on behalf of an entity that's
2 not a party to this case. That's why it doesn't satisfy the
3 rule.

4 THE COURT: But -- go ahead.

5 MR. IGNALL: We've talked about this before. One,
6 the only thing that he can argue with as for the truth of the
7 matter asserted is the "Barry asked me to remind you" part,
8 which itself indicates the agency relationship just on the face
9 of the e-mail. The e-mail itself indicates Mr. Rovin is
10 sending something. So that alone would establish that Mr.
11 Bekkedam -- at least went to Bekkedam and asked him to do.
12 The witness has already testified that he spoken to Mr. Rovin
13 and Mr. Bekkedam about what happened yesterday (phonetic) --

14 THE COURT: Okay, let me stop you there. This
15 statement, "Barry asked me to remind you that it's very
16 important to get the feds the information that it has requested
17 regarding the Nova transaction." Is it an issue whether or not
18 that statement is truthful?

19 MR. ENGLE: I don't know because --

20 THE COURT: Does it become relevant because it's
21 truthful?

22 MR. ENGLE: We don't know whether it is or it isn't.
23 The person who would know whether or not Barry asked him to do
24 that would be Mr. Rovin. And Mr. Rovin is a witness for the
25 Government who's going to testify, and this document is most

Preve - Direct (Ign)

23

1 appropriately put in if it's going to come in through him, who
2 can be cross-examined on what exactly he was being asked to do,
3 when, why. The other thing is that this says that they needed
4 the documentation together. This is about the Levin
5 transaction on change in control. Mr. Levin is a client of
6 Ballamor.

7 THE COURT: The statement in and of itself isn't
8 being offered for the truth of the matter asserted. It's the
9 fundamental question.

10 MR. ENGLE: It certainly is. It's being offered for
11 the truth that --

12 THE COURT: That Barry said to do it.

13 MR. ENGLE: Right, and that means that he has certain
14 knowledge of it or involvement with it. That's all the truth
15 of it.

16 MR. IGNALL: I think that's right. I think that if
17 Barry did indeed ask Mr. Rovin to do it. All they need for
18 admissibility by a preponderance of the evidence the Court has
19 to determine that there was, that this was either at the
20 direction of Mr. Bekkedam or with his consent, then it's
21 admissible against Mr. Bekkedam 2C--

22 THE COURT: What case says that the Court has to go
23 behind the various layers if the initial statement is that
24 Barry said to do it? I don't know of any case that requires
25 that.

Preve - Direct (Ign)

24

1 MR. ENGLE: The Government cites to a Fourth Circuit
2 case that says the subject must relate to the employee's area
3 of authority. So the fact is --

4 THE COURT: (Inaudible). Go ahead.

5 MR. IGNALL: As with respect to Subsection (d), we're
6 introducing this at this point under Subsection (c). It simply
7 is a statement made at the direction of or at the consent of.
8 And the jury can draw that inference even without the substance
9 of the communication simply because Mr. Rovin is sending the
10 document. There's nothing --

11 MR. ENGLE: But again, this is a communication from
12 Barry Bekkedam being as an agent of Ballamor Capital.

13 THE COURT: When is Mr. Rovin going to testify?

14 MR. IGNALL: He's going to testify but I'd like --
15 anticipate -- and we can hold off on that but the reason I
16 don't think we should --

17 THE COURT: Accepting that Mr. Rovin is going to
18 testify, the Court can accept this conditionally. If it can
19 not be linked up the Court can strike it and give a cautionary
20 instruction, limiting instruction, but at this point in time it
21 certainly is admissible conditionally.

22 MR. IGNALL: I will not show the jury that first
23 part. We'll show it was forwarded on.

24 COUNSEL: I intend to use this document so if you're
25 going to redact that would --

Preve - Direct (Ign)

25

1 MR. IGNALL: I don't know --

2 COUNSEL: I have no issue with that.

3 MR. IGNALL: I don't plan to redact. I think it's
4 all admissible.

5 THE COURT: We'll do it conditionally, but the point
6 is if you're going to use it you can't stop him from using
7 either under the circumstances.

8 MR. ENGLE: Well, the same objection would apply, but
9 the Court's ruled.

10 THE COURT: Okay. It's going to be admitted
11 conditionally.

12 MR. ENGLE: Understood.

13 THE COURT: Subject being (inaudible).

14 MR. ENGLE: Understood.

15 THE COURT: And, a cautionary instruction, as long as
16 he doesn't testify.

17 COUNSEL: Thank you, Your Honor.

18 (Sidebar ends)

19 MR. IGNALL: All right. Can we just put this back on
20 the screen for the witness right now, Agent Porter?

21 THE COURT: The objection is overruled. You may
22 continue.

23 BY MR. IGNALL:

24 Q And Mr. Preve, if you could take a look at your screen
25 again. This e-mail from Mr. Rovin to you, did it attach any

Preve - Direct (Ign)

26

1 other e-mails?

2 A Yes, it forwarded an e-mail.

3 Q Are there multiple e-mails, in fact?

4 A Yes, there are.

5 Q Okay. Let's start -- may I talk to Agent Porter for a
6 second? May we have the second page? And may we publish this
7 for the jury, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. IGNALL:

10 Q Do you see the e-mail there? What's the date on that e-
11 mail?

12 A The e-mail on the second page date is August 17, 2009.

13 Q And do you see who it's from?

14 A It is from the administrator of the Pennsylvania
15 Department of Banking, Donna Metcalfe.

16 Q And do you see -- do you know who it's to?

17 A It is to Kim Hartline with a copy to Joseph Moretz.

18 Q Do you know who Kim Hartline is?

19 A Yes.

20 Q Who is Kim Hartline?

21 A Kim Hartline was the secretary of Nova Financial Holdings.

22 Q If we go to the second item there, can you read that?

23 A The source of funds to be used to purchase the stock, if
24 cash funds are used, provide copies of account statements. If
25 assets are to be liquidated, list those assets and provide a

Preve - Direct (Ign)

27

1 copy of the documents that can verify the timing of the
2 transaction. If any portion is borrowed, provide the name of
3 each borrower, name and address of each lender, amount
4 financed, collateral to be pledged, and terms of the
5 transaction, including interest rates, amortization, guarantors,
6 co-makers, and any other arrangement among the parties.

7 Q All right. And then if we go back to the first page and
8 we go to the bottom half. Did you get an e-mail from Ms.
9 Hartline?

10 A Yes I did.

11 Q And what e-mail did you get from her?

12 A This e-mail dated August 17, 2009 to me and copied to
13 Brian Hartline, subject Levin.

14 Q And if you look above that, do you see any reference to
15 Mr. Hartline sending this e-mail to anyone before it got to you
16 ultimately from Mr. Rovin?

17 A Yes.

18 Q To whom did Mr. Hartline send this e-mail?

19 A He sent it to Barry Bekkedam and a copy to Ed
20 DiMarcantonio.

21 A And then if we scroll up one more e-mail, does it look
22 like Mr. Bekkedam sent that to anyone?

23 A Yes. He sent it to Larry Rovin at Ballamor Capital.

24 Q And what information was Mr. Rovin asking you for?

25 A Can I see the top e-mail?

Preve - Direct (Ign)

28

1 Q What is he asking you for?

2 A He's asking me to get the information to the fed on the
3 Nova transaction.

4 Q Thank you. Let me turn your attention back to Exhibit 74.
5 Do you recognize Exhibit 74?

6 A Yes I do.

7 Q And what is Exhibit 74?

8 A Exhibit 74 is an e-mail from George Levin to me and to
9 Barry Bekkedam on the subject of fed follow-up questions.

10 Q And do you recall getting this e-mail on or about August
11 25, 2009?

12 A Yes I do.

13 Q And do you recognize that e-mail to BRB at Ballamor
14 Capital.com?

15 A Yes.

16 Q Whose e-mail address was that at the time?

17 A That is Barry Bekkedam at Ballamor Capital.

18 MR. IGNALL: The Government moves into evidence
19 Exhibit 74.

20 MR. SCHWARTZ: No objection.

21 MR. ENGLE: Objection, Your Honor. It is a hearsay
22 statement of Mr. Levin. It's his e-mail. He's not testifying.

23 MR. IGNALL: Effect only, Your Honor.

24 THE COURT: I'll overrule.

25 MR. IGNALL: May I publish to the jury?

Preve - Direct (Ign)

29

1 THE COURT: Yes, with exception.

2 BY MR. IGNALL:

3 Q Did you at any point -- let's look at that middle e-mail.
4 Did you send that to Mr. Levin?

5 A Yes I did.

6 Q And what did you say to Mr. Levin?

7 A I said, I wish we did not open these doors but here are
8 the questions.

9 Q And what questions are you talking about?

10 A I am specifically talking about the classic motor
11 carriages issues.

12 Q Did you forward an e-mail from anyone else to Mr. Levin?

13 A I forwarded the e-mail from Donna Metcalfe to Kim Hartline
14 and copy to Joseph Moretz, subject Levin. I forwarded that
15 specific e-mail to Mr. Levin.

16 Q And then if we go to the top e-mail, did Mr. Levin write
17 back to you and to Mr. Bekkedam?

18 A Yes he did.

19 Q And what did he say?

20 A He says, "Barry, why am I involved in all of this? I'm
21 trying to help you out. I could care less about this
22 investment."

23 Q Let's turn your attention to Exhibit 79. Just for the
24 witness. Going to September, were you still -- was anyone
25 asking you to collect information to get to any banking

Preve - Direct (Ign)

30

1 regulator regarding Mr. Levin?

2 A Yes.

3 Q And do you recognize Exhibit 79?

4 A Yes.

5 Q And what is Exhibit 79?

6 A It's an e-mail from Larry Rovin to me with a copy to Brian
7 Hartline and Barry Bekkedam.

8 Q And what's the subject of this?

9 A Nova approval.

10 Q And what's the date of this e-mail?

11 A September 4, 2009.

12 MR. IGNALL: The Government moves into evidence
13 Exhibit 79.

14 MR. SCHWARTZ: No objection.

15 MR. ENGLE: Your Honor, same objection as we
16 previously raised at sidebar with the understanding of the
17 court's ruling.

18 THE COURT: All right. With exception, admitted.

19 MR. IGNALL: And may this be published for the jury?

20 THE COURT: Yes, sir.

21 BY MR. IGNALL:

22 Q What is Mr. Rovin asking you for in this e-mail?

23 A He's asking me for the information that the fed requested.

24 Q And if we scroll down, do you see an earlier e-mail near
25 the bottom of the page?

Preve - Direct (Ign)

31

1 A Yes.

2 Q And -- I'm going to hold off on that. I turn your
3 attention to Exhibit 81. Do you recognize Exhibit 81?

4 A Yes, sir.

5 Q And what is Exhibit 81?

6 A Exhibit 81 is an e-mail from me to Brian Hartline, subject
7 George Levin, dated September 8, 2009.

8 Q And do you recall sending this e-mail to Mr. Hartline on
9 about September 8, 2009?

10 A Yes I do.

11 MR. IGNALL: The Government moves into evidence
12 Exhibit 81.

13 MR. DUNCAN: No objection.

14 MR. ENGLE: No objection.

15 THE COURT: Granted.

16 BY MR. IGNALL:

17 Q And what are you telling Mr. Hartline in this e-mail?

18 A I'm telling him that I have not sent anything to anyone
19 yet on the fed questions.

20 Q And what's the next sentence you say there?

21 A " modified the letter per Barry's comments and also I have
22 included a recent summary of our trust accounts. If it is
23 okay, please forward to the appropriate individuals."

24 Q What letter are you talking about?

25 A I am talking about a letter that explains primarily the

Preve - Direct (Ign)

32

1 sourcing of funding for the Nova investment.

2 Q And did you receive comments on that letter from anyone?

3 A I had received comments on the draft of that letter from
4 Barry Bekkedam.

5 Q And if we could show page, I think it's the fourth page to
6 the jury. So did you provide a draft of this letter to Mr.
7 Bekkedam?

8 A I discussed a draft of this letter with Mr. Bekkedam.

9 Q And what are you telling the Department of Banking in this
10 letter?

11 A I'm identifying the sourcing of funds for the Levin
12 investment.

13 Q And at any point do you identify Nova Bank as being the
14 source of any part of that investment?

15 A No I do not.

16 Q Turning to the second page, in the middle, do you see an
17 e-mail from Mr. Hartline?

18 A Yes, I do.

19 Q And did you get an e-mail from Mr. Hartline on or about
20 September 8, 2009?

21 A Yes, I did.

22

23 Q And what did he ask you or say in that e-mail?

24 A He says "when you say letter, what do you mean? You're
25 looking for proof, in essence a bank statement or financing,

Preve - Direct (Ign)

33

1 what entity will be providing the financing in terms of
2 financing. I used the example with Barry that you could
3 advance on Mr. Levin's \$ 5 million line of credit with Mellon.
4 If that were the case, I just need to know the loan specifics,
5 rate and term."

6 Q I'd like to turn your attention to Exhibit 82.

7 MR. IGNALL: And at this point I'd like to move into
8 evidence Exhibit 82.

9 MR. DUNCAN: No objection.

10 MR. ENGLE: No objection.

11 THE COURT: Admitted.

12 BY MR. IGNALL:

13 Q If I could turn your attention to the third page. Is this
14 a letter that you drafted that you spoke to Mr. Bekkedam about?

15 A Yes it is.

16 Q And if we could go to the first page, what is the first
17 page of this document?

18 A The first page is an e-mail from Kim Hartline to Joseph
19 Moretz and William Gahn of the Federal Reserve with copy to
20 myself and Brian Hartline.

21 Q And did this e-mail include the letter we just looked at?
22 If you scroll down? May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 MR. IGNALL: May we publish this, Your Honor?

25 THE COURT: Any objection?

Preve - Direct (Ign)

34

1 MR. DUNCAN: No, Your Honor.

2 THE COURT: Yes, sir.

3 BY MR. IGNALL:

4 Q Did this document forward the letter we talked about?

5 A Yes it did.

6 Q And this is dated September 8th. We can take this off the
7 screen now. After September 8th did you have any
8 communications with Mr. Bekkedam about getting money from Mr
9 Levin to invest in Nova?

10 A Yes I did.

11 Q Did Mr. Bekkedam say anything about any kind of deadline
12 to get the TARP funding?

13 A There were several deadlines mentioned by Mr. Bekkedam.

14 Q If I could turn your attention to Exhibit 102, do you
15 recognize Exhibit 102?

16 A Yes I do.

17 Q What is Exhibit 102?

18 A Exhibit 102 is an e-mail from Barry Bekkedam to me and a
19 copy to Larry Rovin, subject funding, dated October 21, 2009.

20 MR. IGNALL: The Government moves into evidence
21 Exhibit 102.

22 MR. ENGLE: No objection.

23 MR. DUNCAN: No objection.

24 THE COURT: Admitted.

25 BY MR. IGNALL:

Preve - Direct (Ign)

35

1 Q If we could look at that. What did Mr. Bekkedam tell you
2 in the first paragraph?

3 A "I really need help with this and need to work closer with
4 you as these dates approach. We need to put five million into
5 the bank this week. We're supposed to close today. The
6 treasurer will not kill us for 24 hours but we need it to
7 stagger in ASAP. This capital, along with the other five
8 million going in today, allows us to collect 13.5 million of
9 TARP. This gets us to a position to go after the acquisitions
10 we want. The low cost TARP is critical and must close this
11 week."

12 Q And what does he say in the next sentence?

13 A "A bank will within the next two weeks send back \$2
14 million and by 1/15/10 send \$3 million dollars back."

15 Q And then the next paragraph.

16 A "We had originally budgeted for George's subscription
17 agreement 18 million with 10 million coming in financing from
18 the bank, but it looks as if we will only need 10 million with
19 all of it coming back in financing from the bank. Not a lot,
20 but it seems to be headed that way."

21 Q Thank you. Did you get any other e-mails from Mr.
22 Bekkedam around this time?

23 A Yes.

24 Q If I could turn your attention to what we've marked as
25 Exhibit 110, just for the witness at this point. Do you

Preve - Direct (Ign)

36

1 recognize Exhibit 110?

2 A Yes I do.

3 Q And what is Exhibit 110?

4 A Exhibit 110 is an e-mail from Larry Rovin to me dated
5 October 22, 2009, subject funding.

6 Q And does it forward any e-mail to you?

7 A Yes, it forwarded the previous exhibit from Barry
8 Bekkedam.

9 MR. IGNALL: The Government moves into evidence
10 Exhibit 110.

11 MR. DUNCAN: No objection.

12 MR. ENGLE: Your Honor, same objection as before with
13 the understanding of the court's ruling.

14 THE COURT: All right. It is admitted conditionally.
15 BY MR. IGNALL:

16 Q At this time in October were you working on any other
17 projects or other deals with Mr. Bekkedam other than Mr.
18 Levin's investment in Nova Bank?

19 A Mr. Bekkedam had asked that we take another look at his
20 fire truck company, which we had previously declined to invest
21 in.

22 Q Let me ask you slightly different. Were you involved with
23 Mr. Bekkedam at all in terms of Mr. Bekkedam getting investors
24 into the Banyon Income Fund at this time?

25 MR. ENGLE: Objection to the leading.

Preve - Direct (Ign)

37

1 THE COURT: Sustained.

2 BY MR. IGNALL:

3 Q Do you recall whether you had any conversations with Mr.
4 Bekkedam around this time about the Banyon Income Fund?

5 A We had a number of conversations about Banyon Income Fund.

6 Q And were those ongoing in October of 2009?

7 A Absolutely.

8 Q If I could turn your attention to Exhibit 101. Do you
9 recognize Exhibit 101?

10 A Yes I do.

11 Q And what is Exhibit 101?

12 A Exhibit 101 is an e-mail from Barry Bekkedam to me with a
13 copy to George Levin and Scott Rothstein, subject Nova, dated
14 October 21, 2009.

15 Q And does this talk about any investors in the Banyon
16 Income Fund?

17 A Yes it does.

18 Q And who's the first name there?

19 A Anthony Bonomo.

20 Q And what does the e-mail say about Mr. Bonomo?

21 A 2.5 m, 2.5 million, Anthony Bonomo, Nova Bank sending
22 wire, just need to track him down this morning.

23 Q Let me turn your attention now to Exhibit 106. Just for
24 the witness at this point. Going back to October 21st, was Mr.
25 Bekkedam asking you at this time period about getting money for

Preve - Direct (Ign)

38

1 Mr. Levin for Nova Bank?

2 MR. ENGLE: Objection; leading.

3 THE COURT: Sustained.

4 BY MR. IGNALL:

5 Q Let me turn your attention to Exhibit 106. Do you
6 recognize Exhibit 106?

7 A Yes I do.

8 Q And what is Exhibit 106?

9 A Exhibit 106 is an e-mail from Barry Bekkedam to me dated
10 October 21, 2009, without a subject.

11 MR. IGNALL: Government moves into evidence Exhibit
12 106.

13 MR. ENGLE: No objection.

14 MR. DUNCAN: No objection.

15 THE COURT: Admitted.

16 BY MR. IGNALL:

17 Q And what is Mr. Bekkedam telling you here on October 21st?

18 A He stated that he felt like --

19 Q Well can you just read it? What does it say? Frank --

20 A Excuse me?

21 Q If you could just read the e-mail. It's fairly short.

22

23 MR. IGNALL: May we publish for the jury, Your Honor?

24 THE COURT: Yes.

25 THE WITNESS: "Frank, I feel like I'm checking around

Preve - Direct (Ign)

39

1 my office about funds being sent to you and you're checking
2 about funds to me, lots of fun. I appreciate your help with
3 Nova, et cetera. If you can give me an update of your
4 scheduled timing of fundswise, it would help me manage Brian
5 who is managing his regulators. Thanks, Barry."

6 BY MR. IGNALL:

7 Q Let me turn your attention to what we've marked as Exhibit
8 112. Do you recognize Exhibit 112, at least from like the
9 middle down?

10 A Yes I do.

11 Q And what is Exhibit 112, at least the part that you
12 recognize?

13 A It is an e-mail from Barry Bekkedam to Scott Rothstein,
14 Steve Miller, Frank Preve and a copy to George Levin, subject 2
15 million funding for Banyon II date October 22, 2009.

16 Q Do you remember having any discussions with Mr. Bekkedam
17 around October 22, 2009 about funding for Banyon II?

18 A Yes I did.

19 Q And what do you remember about those discussions?

20 A That he was going to start sending moneys to Banyon II
21 rather than Banyon Income Fund LP, the original fund that he
22 had set up.

23 Q Was Banyon Fund designed to do things similar to the
24 Banyon Income Fund?

25 A It was designed to do exactly the same thing, only without

Preve - Direct (Ign)

40

1 the investor limitation that the original Banyon Income Fund
2 had reached.

3 Q I turn your attention to Exhibit 114. Do you recognize
4 Exhibit 114?

5 A I recognize the second e-mail.

6 Q And what is the second e-mail?

7 A The second e-mail is from Barry Bekkedam to Frank Preve
8 dated October 23, 2009, subject miscellaneous.

9 MR. IGNALL: At this point the Government moves into
10 evidence Exhibit 114.

11 MR. ENGLE: No objection.

12 MR. DUNCAN: No objection.

13 THE COURT: Admitted.

14 MR. IGNALL: May it be published to the jury, Your
15 Honor?

16 THE COURT: Yes, sir. Let's take a brief recess.

17 (OFF THE RECORD)

18 THE DEPUTY: Ladies and gentlemen, we are back on the
19 record.

20 THE COURT: Thank you. You may be seated. All
21 right, counsel, you may proceed.

22 MR. IGNALL: Thank you, Your Honor.

23 MR. IGNALL: I believe when we had broke we had just
24 introduced Exhibit 114. May we publish that for the jury, Your
25 Honor?

Preve - Direct (Ign)

41

1 THE COURT: Any objection?

2 MR. ENGLE: No, Your Honor.

3 MR. DUNCAN: No, Your Honor.

4 THE COURT: Granted.

5 BY MR. IGNALL:

6 Q Now just for the jury, at least the second e-mail there,
7 who is that to and from?

8 A The second e-mail is from Barry Bekkedam to Frank Preve
9 dated October 23, 2009, subject miscellaneous.

10 Q All right. Let's look at the third paragraph. Let me
11 blow that up; it's one line. What does that say? What's Mr.
12 Bekkedam saying there?

13 A "I need some guidance from you on Nova, et cetera. Brian
14 has the regulators killing him. I just some guidance."

15 Q Let's turn to the next paragraph. What does that say?

16 A "Again, we originally assumed we would raise 50 million to
17 execute on our plan of 18 million being committed by George.
18 Nova would lend George 5 million for the first amount (done),
19 the next amount was 10 million which I raise 5 million (done
20 and funded) and George would fund 5 million which needed to be
21 funded Wednesday. George will get 2 million back from the bank
22 in one to two weeks and the rest by early first quarter. Based
23 on the funding this week, we have been granted 13.5 million in
24 TARP. We have requested an extension from the treasury but can
25 not be guaranteed that we get it (they a bureaucrats not

Preve - Direct (Ign)

42

1 businessmen). The rest will be raised by us depending on what
2 we need to grow."

3 Q And on October 23rd did Mr. Levin have other business
4 interests with Mr. Bekkedam other than Nova Bank?

5 A Yes he did.

6 Q I'd like to turn your attention to October 31st of 2009.
7 In your role as a consultant for Mr. Levin were you aware of
8 his financial status in late October or early November of 2009?

9 A Yes I was.

10 Q And particularly with respect to the Banyon investments,
11 was there any change in Mr. Levin's financial status?

12 A Yes there was.

13 Q And did it get better or worse?

14 A It got worse.

15 Q All right. And right around the end of October or early
16 November did you learn whether the Banyon investments had
17 decreased in value?

18 A Yes I did.

19 Q And had they decreased significantly?

20 A Significantly.

21 Q To the point that you had concerns whether they had any
22 value at all?

23 MR. EGAN: Objection. Leading.

24 THE COURT: Sustained.

25 MR. IGNALL: Well Your Honor, may I approach at

Preve - Direct (Ign)

43

1 sidebar?

2 THE COURT: Surely.

3 (Sidebar conference)

4 MR. IGNALL: That was intentionally leading because I
5 didn't want to go into the area that the Court has asked me not
6 to about the --

7 MR. EGAN: He doesn't have to go into that. He
8 doesn't have to suggest the answer.

9 THE COURT: I don't have a problem with him leading
10 on that one for the stated purpose.

11 MR. EGAN: Thank you.

12 (In open court.)

13 BY MR. IGNALL:

14 Q As of early November did you have concerns about whether
15 the Banyon investments had any value at all?

16 A Yes I did.

17 Q And were you present at any meetings with Mr. Bekkedam
18 where you or anyone else discussed Mr. Levin's change in
19 financial circumstance?

20 A Yes.

21 Q And what were the purpose of those meetings, or the
22 subject of those meetings?

23 A The subject of the meetings would be how to go forward
24 with the diminished value of the Banyon investments.

25 Q And was Mr. Levin in a position to put any money into Nova

Preve - Direct (Ign)

44

1 Bank at that point?

2 MR. EGAN: Objection. Basis.

3 BY MR. IGNALL:

4 Q Were you familiar with Mr. Levin's finances as of early
5 November 2009?

6 A Yes I was.

7 Q And was Mr. Levin in a position to put any money into Nova
8 Bank at that point?

9 A No he was not.

10 Q And were you a participant in any discussion where Mr.
11 Bekkedam was present where that subject came up?

12 A The subject of Mr. Levin's financial condition and his
13 ill-liquidity. I don't specifically recall at those early
14 meetings whether Nova Bank came up.

15 Q Was Mr. Levin by November in a position to pay off the \$5
16 million loan from Nova Bank?

17 A Absolutely not.

18 Q Did you have any discussions with Mr. Hartline about that?

19 A Yes.

20 Q And when did those discussions start?

21 A I recall them starting in mid to late November of 2009.

22 Q If I could turn your attention to Exhibit 124, just for
23 the witness. Do you recognize Exhibit 124? Especially the
24 bottom e-mail?

25 A Yes I do.

Preve - Direct (Ign)

45

1 Q And what is Exhibit 124?

2 A The bottom part of Exhibit 124 is an e-mail from Thomas
3 Patterson to me, copy to Brian Hartline and Ed DiMarcantonio,
4 subject Mr. Levin's property.

5 MR. IGNALL: The Government moves into evidence
6 Exhibit 124.

7 MR. ENGLE: No objection.

8 MR. DUNCAN: No objection, Your Honor.

9 THE COURT: Admitted.

10 BY MR. IGNALL:

11 Q And around this time do you know why -- were you involved
12 in any discussions about Mr. Levin's property with anyone at
13 Nova Bank?

14 A Yes.

15 Q Why?

16 A We were looking to decrease the interest rate, extend any
17 maturity dates by collateralizing the loan.

18 Q Was there any collateral on the loan at that point?

19 A No. It was an unsecured loan.

20 Q And was this around the time you were having discussions
21 with Mr. Hartline about Mr. Levin's financial situation?

22 A Yes.

23 Q Did, at least as far as you know by working for Mr. Levin,
24 Mr. Levin ever provide any collateral for the loan?

25 A Not to my knowledge.

Preve - Direct (Ign)

46

1 Q Did you ever discuss with Mr. Hartline the idea of Mr.
2 Levin selling Nova stock?

3 A Yes.

4 Q And tell us about that discussion.

5 A Well initially the discussion was that since we did not
6 have the stock in hand, and if we did not have it in hand I
7 assumed it was not issued. And so I talked to Mr. Hartline
8 about liquidating the escrow account where I was thinking that
9 the \$5 million was still in. And when Mr. Hartline said the 5
10 million was actually used to increase the bank's capital, and
11 even though we did not have the stock, I asked if he could
12 liquidate the stock at whatever the current market value was
13 and repay the \$5 million loan.

14 Q And what did Mr. Hartline say?

15 A He did not think that there was a market to sell the stock
16 at that time.

17 Q Were you involved in any discussions with Mr. Bekkedam
18 about getting collateral for Mr. Levin's loan? If I could turn
19 your attention to Exhibit 170, just for the witness. Do you
20 recognize Exhibit 170?

21 A Yes.

22 Q And what is Exhibit 170?

23 A It is an e-mail from Barry Bekkedam to Brian Hartline and
24 DiMarcantonio with a copy to me and to Mr. Levin, subject, can
25 we follow-up conversation of our last conversation ASAP, dated

Preve - Direct (Ign)

47

1 February 6, 2010.

2 Q And does this include any other e-mails? And if I could
3 approach the witness.

4 THE COURT: Yes, sir.

5 MR. IGNALL: I'd like to move into evidence Exhibit
6 170.

7 MR. DUNCAN: No objection.

8 MR. ENGLE: No objection.

9 THE COURT: All right. You may proceed.

10 BY MR. IGNALL:

11 Q Do you see the second page? What is the second page?

12 MR. IGNALL: May I publish to the jury, Your Honor?

13 THE COURT: Yes, sir.

14 THE WITNESS: The second page is an e-mail from Barry
15 Bekkedam to George Levin and Larry Rovin with copies to Frank
16 Preve, Barry Hartline and DiMarcantonio, dated February 1,
17 2010.

18 BY MR. IGNALL:

19 Q And if I could turn your attention to maybe halfway
20 through the first paragraph. See where it says, the bank is
21 willing? Could you read that to us?

22 A Yes. "The bank is willing, as I understand, to discuss
23 modifications to your loan, for example, lowering your rate as
24 a home equity on Pennsylvania but needs you to call him, answer
25 a few questions and supply some data. He can not understand

Preve - Cross (Ega)

48

1 why you won't speak with him. It won't take much time."

2 Q When did you stop working for Mr. Levin?

3 A I stopped working for Mr. Levin in April 2010.

4 Q And through April 2010 were you familiar with Mr. Levin's
5 finances?

6 A Yes.

7 Q And as of April 2010 had Mr. Levin paid off that \$5
8 million loan to Nova Bank?

9 A No he had not.

10 MR. IGNALL: Nothing further.

11 THE COURT: You may cross-examine.

12 MR. EGAN: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. EGAN:

15 Q Good morning, Mr. Preve.

16 A Good morning, sir.

17 Q Mr. Preve, you knew Mr. Levin for a very long time,
18 correct?

19 A Yes, sir.

20 Q In fact, over 20 years?

21 A More than 20 years, sir.

22 Q And you worked for him for a long time as well.

23 A Yes, sir.

24 Q I think twice, right?

25 A Yes, sir.

Preve - Cross (Ega)

49

1 Q So once back in the '90's, would that be correct?

2 A Once back in the '80's.

3 Q In the '80's. And when you worked for him in the '80's,
4 he was a very rich man, correct?

5 A Yes he was.

6 Q And then you came back to work for him again in the
7 2000's, right?

8 A Yes, sir.

9 Q And when you came back to work for him, he was even
10 richer, right?

11 A He became richer, yes sir.

12 Q In fact, I think the words you used were, the scope of the
13 companies he had control of had expanded significantly.

14 A Yes, sir.

15 Q And that wealth was not wealth that was created, for the
16 most part, as a result of Banyon, correct?

17 A Not in the early 2000's, no sir.

18 Q And indeed, it was created because of all these other
19 companies that he owned and ran.

20 A Yes, sir.

21 Q Now I believe you described him as a dynamic entrepreneur,
22 correct?

23 A Yes, sir.

24 Q So he had a whole lot of different businesses going on.

25 A Yes, sir.

Preve - Cross (Ega)

50

1 Q And he had a whole lot of assets.

2 A Yes, sir.

3 Q And you were his business manager, correct?

4 A Yes, sir.

5 Q And in doing that you coordinated his financial reporting.

6 A Yes, sir.

7 Q So you're very familiar with his financial statements,
8 during that period of time at least.

9 A Yes, sir.

10 Q Now another thing you said about Mr. Levin which was
11 interesting was you said that he kept his own counsel. Do you
12 remember that?

13 A Not specifically.

14 Q Well Mr. Ignall asked you about whether you advised him
15 about investing in Nova Bank and your answer was he kept his
16 own counsel. Remember that?

17 A Yes, sir.

18 Q Now by that I assume you mean that he made is own
19 decisions?

20 A For the most part, yes sir.

21 Q But that could also mean he had a number of lawyers as
22 well, right?

23 A It could mean that, yes, but that's not what I was
24 referring to.

25 Q But he did have a number of lawyers, I assume.

Preve - Cross (Ega)

51

1 A He had a single attorney that he depended on, yes.

2 Q And he relied on that lawyer's advice.

3 A Yes, sir.

4 Q Now you didn't tell Mr. Levin what he should or shouldn't
5 do for the most part, correct?

6 A I constantly was giving him advice but that doesn't mean
7 he listened to it constantly.

8 Q He made his own decisions.

9 A Yes, sir.

10 Q And one of the decisions that I believe you said he made
11 that was not on your advice was Banyon itself, correct?

12 A He started -- he made the first transaction without asking
13 for my consultation.

14 Q And let's talk a little bit about Banyon. Mr. Levin
15 himself invested in Banyon to begin with, correct?

16 A Yes, sir.

17 Q And he found it to be a fairly good investment?

18 A Yes, sir.

19 Q And he was very pleased with his return.

20 A Very pleased, yes, sir.

21 Q And do he decided to introduce other people to it as well,
22 correct?

23 A Yes, sir.

24 Q Now when he introduced those other people, Mr. Ignall
25 brought up the issue that he guaranteed their investments,

Preve - Cross (Ega)

52

1 correct?

2 A Yes, sir.

3 Q What he didn't bring up was the reason he guaranteed their
4 investments was so he could make a profit off them, right?

5 A Yes, sir.

6 Q Because like most rich people, Mr. Levin liked to make his
7 money using other people's money, correct?

8 A To an extensive extent, yes sir.

9 Q So what he really did, rather than say, hey do you want to
10 invest in this, I'll guarantee you the money, what he did was
11 he was getting a rate of one number, right?

12 A Yes, sir.

13 Q And he was selling these promissory notes to his investors
14 for a lower number.

15 A There was an interest rate differential, yes sir.

16 Q And that was all profit to him.

17 A On a gross basis, yes sir.

18 Q But it was also his risk, was it not?

19 A Absolutely.

20 Q And in order to understand that, one would have to dig
21 pretty deep down into the financials of his relationship with
22 all of these various investors, correct?

23 A It was, you wouldn't have to dig very deeply. It was all
24 on the paperwork.

25 Q Well you would have to request those agreements so you

Preve - Cross (Ega)

53

1 could see what they were, right?

2 A Yes, sir.

3 Q You would have to review them or have a lawyer review
4 them, right?

5 A To determine their interest rate?

6 Q No, determine what the deal is. You'd have to do some due
7 diligence on those funds, correct?

8 A They were very standard.

9 Q In any event, most of the money that was invested in
10 Banyon in 2009 was not George Levin's money, correct? It was
11 the money of these other folks he had guaranteed.

12 A Including the hedge funds?

13 Q Yes.

14 A Yes, sir.

15 Q And indeed, George Levin had a whole lot of money in other
16 places at that point, correct?

17 A He had other assets besides Banyon, yes sir.

18 Q Well we're going to go over those in a little more detail,
19 but let's talk about how he became involved in the Nova Bank
20 transaction. So as I understand it, he met Barry Bekkedam and
21 you weren't there when he met him, but at some point you were
22 told he had this friend, Barry Bekkedam, who was also a
23 financial guy like Mr. Levin, right?

24 A Yes, sir.

25 Q And Mr Bekkedam also had someone assisting him by the name

Preve - Cross (Ega)

54

1 of Larry Rovin, correct?

2 A Yes, sir.

3 Q And most of your back and forth with regard to Ballamor
4 and Mr. Bekkedam was through Mr. Rovin, correct?

5 A Yes, sir.

6 Q And Mr. Rovin was counsel to Mr. Bekkedam and Ballamor,
7 correct?

8 A Among other functions, yes.

9 Q So he was a lawyer.

10 A He acted as a chief operating officer in his interface
11 with me.

12 Q So are you saying he wasn't a lawyer?

13 A I believe he was genera counsel as well, yes.

14 Q So he was a lawyer.

15 A Yes, sir.

16 Q And were you aware that he had been a lawyer for a bank a
17 few years before that?

18 A No, sir.

19 Q IN any event, most of your back and forth was between you
20 and Mr. Rovin, correct?

21 A A lot of it, yes sir.

22 Q And early on one of the things that Mr. Bekkedam and Mr.
23 Levin agreed to do together is for Mr. Levin to assume these
24 Colorado bonds, correct?

25 A Yes, sir.

Preve - Cross (Ega)

55

1 Q And that would have taken place in say early 2009, around
2 March, April, correct?

3 A The actual consideration was paid in April of 2009.

4 Q So if we could have G-15 please? And I believe this is
5 already admitted. Now this is an April 3, 2009 e-mail,
6 correct? Right?

7 A Yes, sir.

8 Q And it's an e-mail from Mr. Bekkedam to you copying Mr.
9 Levin, correct?

10 A Yes, sir.

11 Q And it's forwarding an e-mail which is requesting
12 information from Nova Bank, correct?

13 A Yes, sir.

14 Q And the first person on there is Brian Hartline at Nova
15 Bank.com. At this point in time you didn't know who Brian
16 Hartline was, did you?

17 A No, sir.

18 Q And in fact, you never met Brian Hartline, did you?

19 A I do not believe so, sir.

20 Q So you wouldn't know him if you tripped over him, right?

21 A No I would not.

22 Q And there's some other folks on this e-mail. One is named
23 Mark Poliski and Tom Patterson. Now Mark Poliski is a senior
24 credit manager at Nova, did you know that?

25 A No, sir.

Preve - Cross (Ega)

56

1 Q And Tom Patterson was the loan officer. Did you know
2 that?

3 A Yes, sir.

4 Q And that's because ultimately you ended up dealing with
5 Mr. Patterson a bit, didn't you?

6 A Yes, sir.

7 Q In relation to the \$5 million loan that Mr. Levin took
8 out, right?

9 A Among other issues, yes sir.

10 Q And what it asks for is financial statements for the
11 person or entity that will assume the loan, correct?

12 A Yes, sir.

13 Q So basically what you're being told is -- well let me take
14 a step back. Do you recall that these Colorado bonds were
15 funded through a loan? Do you remember that?

16 A They appear to be partially funded by Nova Bank, yes sir.

17 Q Right. And the interest on the bonds paid the loan debt?

18 A Yes, sir.

19 Q And that's why it was a good deal, right?

20 A It appeared to be a break-even deal, yes sir.

21 Q And so Mr. Levin was going to need a loan from Nova Bank
22 in order to -- or he was going to need to be approved by Nova
23 Bank in order to assume the loan, right?

24 A Yes, sir.

25 Q And in the course of that he would have sent his financial

Preve - Cross (Ega)

57

1 information back to Nova Bank in April, correct?

2 A Yes, sir.

3 Q Now if we could go to D-16, and just for the witness
4 please. And if you look at the bottom e-mail, sir, that's an
5 e-mail from you to Mr. Hartline, correct?

6 A Yes it is.

7 Q And one of the things there in line 3 says, George will
8 provide personal financial statements and tax returns, correct?

9 A Yes, sir.

10 Q So in other words, in April fo 2009 that's you saying
11 George is going to provide the personal financial statements
12 and tax returns to Nova.

13 A In lieu of the borrower, yes sir.

14 Q Okay. Now if we could go to Government 64, please. And
15 this has been admitted. Now a little while ago Mr. Ignall
16 showed you Government 63, and that was a letter from Mr.
17 Hartline to the Pennsylvania Department of Banking. Remember
18 that, this morning?

19 A Yes, sir.

20 Q Okay. Could you look at Government 64? You would agree
21 with me this is essentially the same letter, right?

22 A It covers the same subject matter, sir.

23 Q Right. And it has an attachment. And if we go to page 2
24 -- strike that. If we go to page 4, that attachment is the
25 application for change in control that you discussed with Mr.

Preve - Cross (Ega)

58

1 Ignall this morning, correct?

2 A Yes, sir.

3 Q And I recall you saying to Mr. Ignall when he showed you
4 number 63, that that was not the whole document that you had
5 seen and reviewed. Remember that?

6 A Yes, sir.

7 Q So I'm going to ask you -- may I approach, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. EGAN:

10 Q Just take a look at tell me is that the complete document?

11 MR. IGNALL: Your Honor, I object. I think the
12 question was about Exhibit 63 and now we're in Exhibit 64 so I
13 think the question is unclear.

14 THE COURT: Correct.

15 MR. EGAN: I will restate it.

16 BY MR. EGAN:

17 Q Is Exhibit 64 the complete application as you recall it?

18 MR. IGNALL: Again Your Honor, I think that assumes
19 that 63 and 64 are the same, which I think assumes a fact not
20 in evidence.

21 THE COURT: Just back up a steps; that's all.

22 MR. EGAN: I'll give the witness a chance to review,
23 Your Honor.

24 THE WITNESS: Well this says it includes the
25 fingerprint, and I don't see the fingerprint in here, but this

Preve - Cross (Ega)

59

1 looks like what I saw last week in court and it appears to be
2 the package without the fingerprinted card.

3 BY MR. EGAN:

4 Q And you would agree with me, sir, that as far as the
5 financial information on there, that's financial information
6 that you helped prepare and provide, correct?

7 A Yes, sir.

8 Q And now I'm going to use the screen because it will be a
9 lot easier for us to move around. If you could turn to page
10 19. That appears to include a financial report, correct?

11 A Yes, sir.

12 Q And it states that Mr. Levin has cash on hand in
13 depository institutes of over \$6.7 million, correct?

14 A Yes, sir.

15 Q And it states that he has proprietary interest and other
16 securities of over \$388 million, correct?

17 A Yes, sir.

18 Q It also says that he has real estate -- well no, we have
19 to go back to the schedule to see that. He also has retirement
20 funds. But his total value is \$449,135,000, correct?

21 A Yes, sir.

22 Q Now if we could go to page 27, and that is the personal
23 financial statement as of March 31, 2009 and it is signed by
24 Mr. Levin and his wife, correct?

25 A Yes, sir.

Preve - Cross (Ega)

60

1 Q And it's dated June 6th, correct?

2 A Yes, sir.

3 Q And you had no reason to believe that anything in this was
4 false, correct?

5 A No, sir.

6 Q In fact, your belief was that everything in this was true,
7 correct?

8 A Yes, sir.

9 Q Because at the time Mr. Levin was worth \$400 million,
10 correct?

11 A Yes, sir.

12 Q All right. If we could go to the next page. Mr. Levin
13 had \$6.7 million in the bank, correct?

14 A That includes consolidating all of his single member LLC
15 cash on hand as well, yes sir.

16 Q And almost \$4 million in unused lines of credit, correct?

17 A \$3.4 million, yes sir

18 Q And 256 million in closely held securities?

19 A Yes, sir.

20 Q And 140 million in real estate, correct?

21 A Yes, sir.

22 Q In fact, he had almost 6 million in personal property,
23 artwork and autos, correct?

24 A Yes, sir.

25 Q So these are all items -- taking out the closely-held

Preve - Cross (Ega)

61

1 securities -- all the rest are all items totally unrelated to
2 the money that he had in Banyon, correct?

3 A Yes, sir.

4 Q Now, if we could go to the next page. And sir, Mr. Levin
5 had a lot of bank accounts, didn't he.

6 A Yes, understanding that this includes all the single
7 member LLC bank accounts as well.

8 Q Correct. Rather than have to go through and count them
9 all, if I were to tell you there are seven different banks
10 where Mr. Levin has his money, you wouldn't quibble with that,
11 would you?

12 A Probably not, sir.

13 Q And now if we could go to page 31. This is all his real
14 estate, right?

15 A Yes, sir.

16 Q And if we go down, he owned a medical office building?

17 A Yes, sir.

18 Q Two below that, he owned Foxcroft Village, which is a
19 manufactured housing community.

20 A Yes, sir.

21 Q A little bit below that, he owned a manufacturing plant in
22 Miami, Florida?

23 A Yes, sir.

24 Q And then right below that, stop there, Madison House, do
25 you see that?

Preve - Cross (Ega)

62

1 A Yes, sir.

2 Q Now Madison House I think you talked about on direct
3 examination, right?

4 A Yes, sir.

5 Q And that was a property that he owned in Atlantic City?

6 A Yes, sir.

7 Q And you had worked on that way back when, correct?

8 A Mid 1980's.

9 Q It's a hotel, right?

10 A Yes, sir.

11 Q And you can't see it in this here but maybe you can -- it
12 says here the market value is \$50 million, is that correct?

13 A Yes, sir.

14 Q And so at the time he had a \$50 million interest in a
15 hotel in Atlantic City, correct?

16 A Yes, sir.

17 Q Now if we could scroll down and go back over, keep
18 scrolling down, all the way to the second from the bottom. See
19 that 326 it looks like, South Fairfield, Devon, PA. Are you
20 familiar with that property?

21 A I'm aware of the property, sir, yes.

22 Q That was a home that Mr. Levin owned in Devon, correct?

23 A Yes, sir.

24 Q And it was a home that he was spending a lot of money to
25 make nicer, correct?

Preve - Cross (Ega)

63

1 A Yes, sir.

2 Q And if we go over to the right about three columns. \$4.5
3 million and then it says new improvements, and that's because
4 there were improvements being done on that property, correct?

5 A Yes, sir.

6 Q And if you continue over, it says there's a \$1 million 1
7 hundred some dollar mortgage, correct?

8 A Yes, sir.

9 Q And \$3 million in equity.

10 A Yes, sir.

11 Q Now if we could go to the next page. Mr. Levin also owned
12 a few other items, didn't he. And just the first three of
13 these are a Citation 3; that's an airplane, right?

14 A Yes, sir.

15 Q It's a jet, I assume?

16 A Yes it is.

17 Q An 80-foot yacht, correct?

18 A Yes, sir.

19 Q And a Gulf Stream Jet.

20 A Yes, sir.

21 Q So when Mr. Levin made his application to the fed to be a
22 changing control investor he owned all that stuff, right?

23 A Yes, sir.

24 Q And by the way, this is Mr. Levin's application, correct?
25 He signed it, right?

Preve - Cross (Ega)

64

1 A This is Exhibit 64?

2 Q Yes. If you go to page 8.

3 A Yes, he signed it.

4 Q So that's his Certification, correct? He's certifying
5 this information has been examined carefully by him and is true
6 and correct. Right?

7 A This is the application?

8 Q Yes.

9 A As I indicated earlier, I don't believe he completed the
10 application but he did sign it.

11 Q Well certainly nobody at Nova Bank knew he owned all that
12 stuff. I mean he had to proved that information, right,
13 through you?

14 A I'm sorry. Is this the application or is this the
15 financial statement?

16 Q Well it's all part of the application, sir. My question
17 is, all of that information about his finances had to come
18 either from you or Mr. Levin, correct?

19 A Can I see the Bates number of this?

20 Q Sure.

21 A I don't mean to quibble but that -- 1069 is the
22 application to the fed and we've been talking about the
23 financial statement, which is a separate signed document.

24 Q I understood. It was attached to the application.

25 A Yes, sir.

Preve - Cross (Ega)

65

1 Q And made a part of the application.

2 A Yes, sir.

3 Q Understood. And while we're at it, one last thing on
4 there. If you could go to page 19, or I'm sorry, not 19, page
5 6. And this first part, that's the part you said you think
6 Nova filled out, right?

7 A Yes, sir. Or somebody filled out.

8 Q Right, someone provided. If you could go to paragraph
9 seven, if we could blow that up. It says, provide the
10 following information, and it says source and amount of funds.
11 Do you see what it says there?

12 A Yes, sir.

13 Q It says, half from personal finances and half from
14 borrowed funds, correct?

15 A Yes, sir.

16 Q And that was consistent with the original deal, wasn't it?

17 A I do not understand the question.

18 Q I'll withdraw it. Mr. Levin was supposed to put up some
19 of his own money for this, correct, originally?

20 A I never saw that in any deal, and Mr. Levin did not want
21 to use his own money.

22 Q Because Mr. Levin never wanted to use his own money,
23 right?

24 A Philosophically, that tended to be correct, yes sir.

25 Q One of the reasons Mr. Levin wanted to invest in Nova Bank

Preve - Cross (Ega)

66

1 was because Mr. Levin wanted to own a bank in Florida, correct?

2 A That is the argument that Mr. Bekkedam was making to Mr.
3 Levin, yes sir.

4 Q That Mr. Levin invested so he obviously agreed with it,
5 right?

6 A Mr. Levin reluctantly invested in Nova, yes sir.

7 Q And Mr. Levin wanted to invest in a bank in Florida so he
8 could have a place to put the money from the Banyon fund and
9 pay less fees and et cetera on it, right?

10 A The purpose was to put the trust funds that were related
11 to the Banyon investments in a bank and they would be very low
12 cost funds and the bank itself would earn a substantial margin
13 on employing those funds and the bank would become very
14 profitable with very little risk.

15 Q And Mr. Levin would benefit.

16 A As an owner in the bank, yes sir.

17 Q So that's why he agreed to do this basically, right?

18 A That was an incentive for him to do this. He was doing
19 this as an accommodation to Mr. Bekkedam.

20 Q An accommodation with an incentive.

21 A Yes, sir.

22 Q And indeed, theoretically, if Nova Bank had been able to
23 prosper, they could have expanded to Florida and taken over a
24 bank there, correct?

25 A I assume that they would have that capability but I don't

Preve - Cross (Ega)

67

1 have that, any knowledge on that capability.

2 Q And one of the banks that they discussed, at least Mr.
3 Bekkedam and Mr. Levin discussed, was this Flagler Bank, right?

4 A Yes, sir.

5 Q As a potential target.

6 A Yes, sir.

7 Q So that's why Mr. Levin decided to invest, both as an
8 accommodation to Mr. Bekkedam and because he had this interest
9 in having a Florida bank, correct?

10 A Yes, sir.

11 Q Now when Mr. Levin decided to invest he realized, whether
12 he took a loan out or not, that he was making a commitment,
13 correct?

14 A Are we talking about the subscription agreement, or are we
15 talking about the Nova Bank loan?

16 Q Let's talk about the subscription agreement. You are
17 aware that he signed one, correct?

18 A I don't recall it but I believe he did, yes sir.

19 Q If we could have G-62 which has already been admitted.
20 And if we could actually go to page 2. You see this document?

21 A Yes, sir.

22 Q Are you able to read it?

23 A Barely.

24 Q This is a subscription agreement of Mr. Levin, correct?

25 A It appears to be, sir, yes.

Preve - Cross (Ega)

68

1 Q And it's for \$18 million, correct? It's up there in the
2 top right corner. See it?

3 A Yes, sir.

4 Q And by signing this, this is Mr. Levin's agreement that
5 he's going to invest \$18 million in Nova Bank, correct?

6 A Yes, sir.

7 Q And that's a contract, right?

8 A I'm not a lawyer, sir, but it would appear that it's -- a
9 subscription agreement would be a contract, yes sir.

10 Q So now Mr. Levin has to buy Nova Bank stock, correct?

11 A Yes, sir.

12 Q And in order to buy that stock he wants to borrow the
13 money to do it, right?

14 A He did not want to use his own funds.

15 Q Now needless to say, Mr. Levin has a number of different
16 sources from where he could borrow money, correct? We just
17 looked at a \$3 million line of credit from Mellon, correct?

18 A Well it would depend on whether he had used those funds
19 for another purpose. The financial statement was dated March
20 of 2009 and the Nova Bank loan took place at the end of June
21 2009 so I don't know what the status of those lines of credit
22 were in June of 2009.

23 Q Understood. If we could have Government 301, and this is
24 for the witness only. And I'm showing you what's been
25 previously marked as Government Exhibit 301. And I want to

Preve - Cross (Ega)

69

1 represent to you, sir, that it's the loan file essentially for
2 Mr. Levin's loan, and if we could go to page 24, please. You
3 were asked yesterday whether Mr. Levin ever filled out an
4 application for this loan. Do you remember that?

5 A Yes, sir.

6 Q And you said no. Do you remember that?

7 A I do not recall an application.

8 Q You would agree with me that this is a commercial loan
9 application, correct?

10 A It does say that at the top.

11 Q And it's from Nova Bank?

12 A Yes, sir.

13 Q And the applicant's name is George Levin, correct?

14 A Yes.

15 Q And if we go down to the signature block, that is Mr.
16 Levin's signature, correct? June 25th '09?

17 A It does not appear to be a signature to me, sir.

18 Q Okay. But you would agree with me it's dated June 25th
19 '09, correct?

20 A Yes, sir.

21 Q And the amount requested, \$5 million.

22 A Yes, sir.

23 Q Now you would agree with me that this all took place seven
24 years ago, six, seven years ago, right?

25 A Yes, sir.

Preve - Cross (Ega)

70

1 Q So you're not going to tell us you remember every last
2 thing that happened, right?

3 A No, I certainly do not remember everything that's
4 happened.

5 Q Okay. Now if we could go to G-38. G-38 is a June 26,
6 2009 -- the lower e-mail -- June 26, 2009 e-mail from you to
7 Larry Rovin, correct?

8 A Yes, sir.

9 Q And you write to him, "here are George's financials, tax
10 returns right behind it. Can you send to Nova? I don't know
11 who you want to receive this stuff." Correct?

12 A Yes, sir.

13 Q So as of June 26th you didn't even know who at Nova was
14 actually the point of contact.

15 A Yes, sir.

16 Q But you did know Larry Rovin was a point of contact for
17 you.

18 A Yes, sir.

19 Q And you would agree with me, would you not, that Larry
20 Rovin is aware that you are applying for this loan, correct?
21 Because you're sending him the information to do it.

22 A Yes. I mean Larry just sent me an e-mail asking for this
23 information.

24 Q Right. And the purpose of the information was to do the
25 loan so that George could invest in Nova, correct?

Preve - Cross (Ega)

71

1 A Yes, sir.

2 Q And Mr. Rovin, who's a former banking lawyer, is included
3 in all of this correspondence, correct?

4 A Much of it, yes, sir.

5 Q Mr. Rovin never suggested to you there was any problem
6 with any of this, does he?

7 MR. IGNALL: I'm going to object to the extent this
8 calls for a legal conclusion from Mr. Rovin.

9 THE COURT: Sustained.

10 BY MR. EGAN:

11 Q Now if we could go to G-40 please. And G-40 is again you
12 and Mr. Rovin and now Mr. Hartline is on the chain, correct?

13 A Yes, sir.

14 Q And if you go down to the bottom, Monday, June 29th, you
15 have, see my highlighted questions. Do you see that?

16 A Yes, sir.

17 Q And underneath that is an e-mail, on the next page is an
18 e-mail from Mr. Rovin to you asking some questions about the
19 financials of these statements, right?

20 A Yes, sir.

21 Q So basically you're being asked to provide more
22 information for purposes of approving this loan, correct?

23 A Yes, sir.

24 Q And there's nothing unusual about that, right? That
25 happens all the time in loan applications.

Preve - Cross (Ega)

72

1 A Yes, sir.

2 Q Now we're all aware Mr. Levin receives the loan, correct?

3 A Yes.

4 Q And as a result of that funds are wired from Nova to Mr.
5 Levin, correct?

6 A Yes, sir.

7 Q And I believe you used the word on Thursday when asked
8 about what bank account those funds went into, that was the
9 account that Mr. Levin elected the funds to go into. Do you
10 remember that?

11 A His personal bank account.

12 Q Yeah.

13 A Yes, sir.

14 Q But you said he elected to put it there, right?

15 A Yes, sir.

16 Q That's because he could have elected it to send somewhere
17 else, correct?

18 A To another personal bank account, yes sir.

19 Q Sure, one of his other seven banks, right?

20 A He didn't have personal accounts in seven banks, but he
21 had other banks where he had personal accounts, yes sir.

22 Q Okay. And the reason he was able to elect to send it to
23 his personal account is because, having been approved for a
24 loan and receiving the funds, it was now his money, right?

25 A He was able to choose the bank account because Nova asked

Preve - Cross (Ega)

73

1 which bank account he wanted it transferred to, and so he gave
2 the Gibraltar account.

3 Q Because now that was his money, right?

4 A Yes.

5 Q He put it in his bank account.

6 A Yes, sir.

7 Q The decision to send it from his bank account back to Nova
8 was his, correct?

9 A He did it at the behest of Nova, yes.

10 Q Well I go to work at the behest of the people I feed, but
11 it was his decision, right?

12 A He was adhering to the request by Nova Bank, yes sir.

13 Q So you said it wasn't his decision?

14 A He made a decision to do what Nova Bank requested him to
15 do, yes sir.

16 Q Which was --

17 A Send the money back.

18 Q -- to return funds that were his.

19 A Yes, sir.

20 Q And there was nothing that required him to do that, was
21 there.

22 A No. He was doing this on the basis of good faith though.

23 Q Because he wanted to invest in Nova Bank.

24 A That was part of the arrangement, yes sir.

25 Q Correct.

Preve - Cross (Ega)

74

1 A So if we could go to Government 52. We looked at this
2 this morning. This is his personal bank account, right?

3 A Yes, sir.

4 Q And June 5, 75 grand comes in from Banyon, right? See
5 that?

6 A Yes, sir.

7 Q Was that like his monthly, is that what he lived on every
8 month?

9 A I can't identify the sourcing of the money other than it
10 did come from a Banyon account, sir.

11 Q This is income basically, right?

12 A I doubt it but I mean -- I can't tell by this entry what
13 the, why it was transferred from Banyon to him. It could well
14 have been but I don't know that.

15 Q But it is his bank account.

16 A Yes, sir.

17 Q And his wife's. And indeed, if we go to Government 47,
18 when you send the wire to Nova to invest, you copy Susan Levin
19 at hotmail, right?

20 A Yes, sir.

21 Q Is that his -- that's his wife's e-mail address, I assume?

22 A Yes, sir.

23 Q Because you're not going to move 5 million bucks out of
24 his account without at least telling someone in his family that
25 you're doing it, right?

Preve - Cross (Ega)

75

1 A No, that's not the reason. It's that Susan and Paul were
2 co-signers on that account and they were involved in every
3 transfer out of the personal account, so I would have always
4 copied her on transfer instructions out of the personal
5 accounts.

6 Q And if she objected, then there would be an issue.

7 A I imagine so, sir.

8 Q Because that's their bank account.

9 A That is their bank account, yes sir.

10 Q And you were sending their money to Nova Bank.

11 A Yes, sir.

12 Q Now going back to G-64, was an application that was filed
13 for change in control, correct?

14 A It was an application, yes sir.

15 Q Now were you aware that there was no need for an
16 application if only \$5 million was invested?

17 A I had no understanding of what was required to make an
18 investment.

19 Q But clearly you knew \$5 million had been invested and no
20 application had been filed, right?

21 A I did not make that conclusion. I did not know whether an
22 application had been filed or not, sir.

23 Q But when you're applying, when you're filing this
24 application, or when Mr. Levin is filing this application, he's
25 filing it because he can't invest the rest of the money until

Preve - Cross (Ega)

76

1 he's approved, right?

2 A I did not understand that.

3 Q You didn't?

4 A No, sir.

5 Q If we could have G-73, please. Now this is an August 17th
6 e-mail, right? It's an August 17th e-mail -- do I have G-73?
7 I'm sorry, I'm looking at the wrong document, my bad. I do
8 want to use this document though. Your Honor, could I have
9 just a moment?

10 THE COURT: Surely.

11 BY MR. EGAN:

12 Q D-51. Sorry. Now you see at the top of this e-mail it's
13 an e-mail from Kim Hartline to you, correct?

14 A Yes, sir.

15 Q And it says, references Levin, correct?

16 A Yes.

17 Q And it says, "Frank, here is the formal request from the
18 P.A. Department of Banking for information. Please contact Ms.
19 Metcalfe if you have any questions." Correct?

20 A Yes, sir.

21 Q So this is Kim Hartline telling you, please call these
22 people up directly and talk to them about these questions,
23 right?

24 A She says if I have any questions I should contact them,
25 yes.

Preve - Cross (Ega)

77

1 Q Right. And she's forwarding you -- and if we could go
2 down now to the e-mail that she forwards. And I apologize for
3 the confusion. This is in a Government exhibit; I just
4 couldn't figure out which one. These are the two questions we
5 looked at this morning, right?

6 A Yes, sir.

7 Q And these two questions we looked at this morning, one has
8 to do with this Classic Motor Carriages thing, right?

9 A Yes.

10 Q And the other has to do with where the money's coming
11 from.

12 A Yes, sir.

13 Q Now Ms. Hartline doesn't say anywhere in this e-mail like
14 don't tell them where the money came from, does she?

15 A No, she does not.

16 Q In fact, she gives you the phone number of the person to
17 talk to, doesn't she.

18 A Yes, sir.

19 Q Now if we could go to G-72 please. And 72A, I apologize.
20 Now this is an e-mail between you and George, correct?

21 A Yes, sir.

22 Q And the topic is Barry, and there's a whole lot in there
23 about stuff you guys got going on with Barry, right? See it?

24 A Yes.

25 Q And if you go down to the third paragraph, right there.

Preve - Cross (Ega)

78

1 Mr. Levin indicates, now I am obligated to buy 24 percent of a
2 bank that under normal circumstances I wouldn't invest a dime
3 in. So you see that?

4 A Yes, sir.

5 Q So this is Mr. Levin now, he's a little bit unhappy, he's
6 got to buy this bank that he agreed to buy, right? Or buy
7 stock in this bank he agreed to buy.

8 A Can you repeat that, sir?

9 Q This is Mr. Levin saying in August that he's unhappy about
10 the fact that he's agreed to invest in Nova Bank.

11 A He's saying that all along, sir. He said it on several
12 occasions.

13 Q Sure. He said it to you.

14 A Yes.

15 Q He never said it to Brian Hartline.

16 A I'm not aware of him saying it to Brian Hartline.

17 Q So this is just one of the many times he complained about
18 being stuck in this deal.

19 A Yes, sir.

20 Q And what does it mean to be stuck in a deal? It means
21 he's got to follow through, doesn't it. Right?

22 A That could be one interpretation, yes sir.

23 Q Unless of course something happens to give him an out,
24 right?

25 A That could be one interpretation, yes sir.

Preve - Cross (Ega)

79

1 Q And if the change in control isn't approved, that would be
2 an out, wouldn't it.

3 A Yes, sir.

4 Q So you don't remember anything about this change in
5 control issue anymore?

6 MR. IGNALL: Objection. That's not in evidence.

7 THE COURT: Sustained.

8 BY MR. EGAN:

9 Q If we could go to Government 73 please. If you go to the
10 very top of it, it's from Larry Rovin to you, correct?

11 A Yes, sir.

12 Q And it says, "Barry asked me to remind you it's very
13 important to get the fed the information it has requested."
14 Correct?

15 A Yes, sir.

16 Q Because obviously if the fed doesn't get the information,
17 the change in control is not getting approved, right?

18 A Yes, sir.

19 Q And he's forwarding e-mails from Brian asking for that
20 information, correct? The string we just looked at, right?

21 A Yes, sir.

22 Q Now if we go to Government 74, and this is once again the
23 same string but now you're talking to Mr. Levin, correct?

24 A Yes, sir.

25 Q And you call it fed follow-up questions, right?

Preve - Cross (Ega)

80

1 A Yes.

2 Q And you say, "I wish we did not open these doors but here
3 are the questions," correct?

4 A Yes, sir.

5 Q And that's because you really did not want to get deeply
6 involved in answering a lot of questions from a federal agency
7 now, did you.

8 A I didn't want to open up the whole Classic Motor Carriages
9 issues again, yes sir.

10 Q And that was an issue that certainly hadn't been shared
11 with Nova Bank prior to making these applications, correct?

12 A I did not share it with Nova Bank. Mr. Bekkedam was aware
13 of Classic Motor Carriages.

14 Q That wasn't my question, sir.

15 MR. ENGLE: Objection.

16 THE COURT: Sustained.

17 MR. ENGLE: Move to strike.

18 THE COURT: Stricken.

19 MR. ENGLE: Thank you,.

20 BY MR. EGAN:

21 Q If we could go to D-56. And sir, again this is a series
22 of e-mails and now it's September. And the first e-mail is
23 from Mr. Hartline to you, correct?

24 A Yes, sir.

25 Q And it says, "I was wondering if you heard from either

Preve - Cross (Ega)

81

1 institution," meaning the fed or the state banking department,
2 right?

3 A Yes.

4 Q Because he's put them in direct contact with you, hasn't
5 he.

6 A We were in direct contact with the fed but not with the
7 state banking department

8 Q And that was -- so if you go up to your e-mail to Mr.
9 Levin in response to this, can you read the -- well first it
10 says, "FYI, the application has been prefilled by Nova and the
11 box that asks if you or any affiliate had been convicted of a
12 crime was already answered in the negative." That's this
13 Classic Car thing, right?

14 A Yes, sir.

15 Q Because they didn't know about it, right?

16 A I don't know their knowledge, sir.

17 Q Well you never told them.

18 A I never told them, sir.

19 Q And the next sentence says, "perhaps you won't be approved
20 and we won't have to waste 18 million on this boondoggle."
21 Correct?

22 A Yes, sir.

23 Q Now this is you and Mr. Levin saying, maybe we'll get
24 lucky and not have to come through on this commitment, right?

25 A This is me saying that maybe we'll be fortunate enough not

Preve - Cross (Ega)

82

1 to have to have an \$18 million investment in the bank, yes sir.

2 Q Correct. Which he had committed to. G-87 please. And if
3 we go to the bottom please. And how you're hearing directly
4 from the Government, correct? From a guy named Bill Gaunt.
5 And he wants to talk about this carriage thing, correct?

6 A Yes, sir.

7 Q Now you then -- if we could go up to the next e-mail --
8 forward this to Mr. Levin, correct?

9 A Yes, sir.

10 Q And you say, "This has become a big deal." Many, many
11 periods. "Hopefully they will turn you down and you'll be able
12 to get out of the investment." Many, many periods. "Another
13 source said the bank is not doing well." Many, many periods.
14 And then you write, "never get involved with the feds" with
15 five exclamation points, right?

16 A Yes, sir.

17 Q And you have pretty good reason to not want to get
18 involved with the feds, didn't you.

19 A I thought I did, yes sir.

20 Q And indeed, you've been involved with the feds before.

21 A That had nothing to do with my input to Mr. Levin.

22 Q Okay. And Mr. Levin writes back, at the top please, "from
23 your mouth to God's ears." Correct?

24 A Yes, sir.

25 Q So you were asked this morning about a conversation that

Preve - Cross (Ega)

83

1 you had via e-mail with Mr. Hartline. And you were shown a
2 document having to do with where the funds were going to come
3 from. Remember that? It's Government's 81 please. Do you see
4 that? Now we're in September of 2009, correct?

5 A Yes, sir.

6 Q And if we go to the part that the Government highlighted,
7 if we go to the second page, there's an e-mail from Brian
8 Hartline to you. And the question now is where is the rest of
9 this money going to come from, right? Where is Mr. Levin going
10 to get the rest of this money, correct?

11 A I can't really read that clearly.

12 Q Can we blow that up, please, the middle e-mail, when you
13 say, letter, what do you mean? Do you see that? Now the
14 letter was the letter that he needed that had to say where the
15 rest of the money was going to come from, right?

16 A Yes, sir.

17 Q And he says, "they are looking for proof, such as a bank
18 statement, or if financing, what entity will be providing the
19 financing," correct?

20 A Yes, sir.

21 Q Now you would agree with me that's a forward-looking
22 statement, would you not?

23 A They use a future term, yes.

24 Q And in fact, he then goes on to say that, "I use an
25 example with Barry, you could advance on his \$5 million line of

Preve - Cross (Ega)

84

1 credit with Mellon," right?

2 A Yes.

3 Q So what he's really wondering here is where is the rest of
4 the money going to come from, right?

5 A That's one interpretation, yes sir.

6 Q And you then respond at the bottom of the page before
7 that, and your answer is, the very bottom one, "Brian, I don't
8 want to bring up the bank lines at this time because they are
9 all up for renewal. I don't know what the renewing terms will
10 be or even if they will be renewed given the current banking
11 environment. We are going to have to depend upon our internal
12 generation of cash over the next quarter to fund this but that
13 should not be a problem." Correct?

14 A Yes, sir.

15 Q That's what you told him should go in that letter, isn't
16 it.

17 Are you going to answer that?

18 A Excuse me? I don't understand the question.

19 Q He's asking what to put in the letter and you tell him,
20 our internal generation of cash, right?

21 A He's not asking me what to put in a letter. He was
22 suggesting something for me to put in a letter, and I'm telling
23 him that I did not want to put that in a letter because of the
24 unstable banking environment.

25 Q Right. And instead he should put, or somebody should put,

Preve - Cross (Ega)

85

1 our internal generation of cash. Right?

2 A I'm telling him that's what we're going to have to depend
3 upon to fund out the rest of the acquisition.

4 Q You also tell him it shouldn't be a problem.

5 A Excuse me?

6 Q You also tell him it shouldn't be a problem.

7 A Yes, sir.

8 Q Now October rolls around. You saw a lot of e-mails this
9 morning from Mr. Bekkedam basically asking about how is George
10 going to come up with more money, correct? Remember those? It
11 wasn't that long ago.

12 A I'm 72 so. I saw a lot of e-mails this morning.

13 Q Okay, well we can look at them, it's not a big deal. if
14 we could go to 110. The Government covered these with you this
15 morning talking about these, ideas I guess is the best way to
16 describe them, for ways that Mr. Levin could fund his
17 subscription, correct?

18 A Yes, sir.

19 Q And you would agree with me, sir, that Brian Hartline is
20 not on any of these e-mails, is he?

21 A I do not see him on these two e-mails, sir.

22 Q Okay, well let's go to 101. He's not on that one either,
23 is he.

24 A No, sir.

25 Q How about 111? Not on that one, is he.

Preve - Cross (Ega)

86

1 A No, sir.

2 Q And 114?

3 A No, sir.

4 Q Now -- and Your Honor, if this is a good time to break,
5 I'll be a little longer, not too much, about 15 minutes or so.

6 THE COURT: Ladies and gentlemen, what's your
7 pleasure? All right. Thank you. A little bit longer you
8 said, counsel?

9 MR. EGAN: Fifteen at the most.

10 THE COURT: All right.

11 BY MR. EGAN:

12 Q If we could go to Government's Exhibit 124, and I believe
13 this was admitted; you were shown it this morning. So now we
14 all know Halloween comes, there's no candy for George Levin, a
15 problem with Banyon, right? Correct?

16 A Could you repeat that, sir?

17 Q Halloween of 2009 Banyon runs into a problem and Mr. Levin
18 now has financial issues, correct?

19 A Yes, sir.

20 Q But he's not broke, is he.

21 A From a cash perspective, yes sir, he is.

22 Q Okay, but he still owns two airplanes, correct? Right?

23 A Yes, I believe some of those were leveraged, but yes.

24 Q He still owns an 80-foot boat.

25 A Yes, sir.

Preve - Cross (Ega)

87

1 Q He's got other bank accounts.

2 A He had no cash, sir.

3 Q He's got other bank accounts.

4 A He had bank accounts but there's no cash in them.

5 Q Got it. He also owned a house in Devon, correct?

6 A That was mortgaged, yes sir.

7 Q Well we was that. It was mortgaged for 1 million and
8 worth 4.5 at least, correct?

9 A Well that's what he had put in the house. That doesn't
10 mean that he could get that out of it, yes sir. It's real
11 estate in a bad real estate market.

12 Q And he also owned the Madison House.

13 A Yes, sir.

14 Q Now Mr. Ignall asked this morning if he ever gave a
15 security interest in any of his property to the bank. Do you
16 recall that?

17 A Yes, sir.

18 Q You're not aware that he gave a security interest in the
19 Madison House to the bank in the spring of 2010?

20 A No, sir. I wasn't aware that that was consummated. I
21 know there were discussions.

22 Q So that might have happened after you left his employment.

23 A It could well have, yes sir.

24 Q Okay. But you do know, based on this e-mail, that in
25 November there was talk about using the property in Devon to

Preve - Cross (Ega)

88

1 collateralize the loan, correct?

2 A Yes, sir.

3 Q And Mr. Levin actually wanted that to happen, correct?

4 A I assume or else we wouldn't be discussing it, sir.

5 Q Right. And the reason he wanted it to happen was because
6 if the collateral was received, then the loan would become
7 cheaper, correct?

8 A And the maturity would be extended, yes sir.

9 Q And that's because the original loan being un-
10 collateralized was at a higher rate than it would have been if
11 it was collateralized, correct?

12 A I'm not sure that that would be the case, but if Mr. Levin
13 is offering additional security, he could definitely be in a
14 position to negotiate a better rate.

15 Q And so he's still trying to negotiate a better rate with
16 the bank, correct?

17 A Yes, sir.

18 Q And he's not saying, I've got nothing, I'm flat broke, I'm
19 out of here, right?

20 A He is telling them that he has no money.

21 Q Okay. You were a party to this discussion?

22 A Yes, sir.

23 Q Okay. But you would agree with me that he tried to post
24 this property, correct?

25 A Yes.

Preve - Cross (Ega)

89

1 Q And there were even papers that went back and forth about
2 possibly posting this property, correct?

3 A I'm sure there were, sir.

4 Q And he continued to pay the loan through, past the point
5 where you left his employ, correct?

6 A I don't recall what the status -- I know that he missed a
7 few of the monthly payments, yes sir.

8 Q He continued to pay it past April of 2010. You're not
9 aware of that?

10 A I know that he was past due on a couple of the payments.
11 I'm not sure that -- maybe they were brought up to date but I'm
12 not aware of that.

13 Q You weren't involved at that point.

14 A No, no sir.

15 Q Sir, you talked when you first took the stand about the
16 fact that you are presently awaiting sentencing, or waiting,
17 going to serve a sentence basically, correct?

18 A Can you repeat that?

19 Q Yeah. It was a bad question. You're going to go to jail
20 soon, right?

21 A Yes, sir.

22 Q And there is a rule called Rule 35 that allows a judge to
23 reduce the amount of time you have to go to jail, correct?

24 A Yes, sir.

25 Q And the only way you can get that Rule 35 is if the

Preve - Cross (Ega)

90

1 Government chooses to file one on your behalf, right?

2 A Yes, sir.

3 Q And in order to receive that, you need to cooperate as
4 much as possible with the Government, correct?

5 A I agreed to cooperate with the Government.

6 Q And you're not doing it because you feel like it. You're
7 doing it in the hopes you'll get a shorter sentence.

8 A Well that's not entirely true. I agreed in my acceptance
9 of responsibility to cooperate with everyone, not just the
10 Government, and I have spent thousands of hours cooperating
11 with everybody, defendants and plaintiffs alike, regulatory
12 people, prosecutors, trustees. I have cooperated on every
13 single level. I've never refused a single question.

14 Q You never met with me, did you sir?

15 A I talked to somebody from your law firm.

16 Q You never met with me, did you sir?

17 A No, I never met with you, sir.

18 Q But you met with them a whole lot it seems.

19 A I believe I met with the Government side three times prior
20 to last week, yes.

21 Q And you would agree with me that you're trying to do the
22 best job you can of cooperating, correct?

23 A I'm trying to cooperate, yes sir.

24 Q And do the best job you can.

25 A Yes, sir.

Preve - Cross (Ega)

91

1 Q Nothing wrong with that. And that best job you can do in
2 cooperating is basically what you've said here in court,
3 correct?

4 A My best job at cooperating is telling the truth, sir.

5 Q And the truth is what you -- strike that. In light of
6 your agreement and in light of your decision to assist the
7 Government, you've come in here to this Court and you have
8 provided evidence as part of your cooperation deal, correct?

9 A Yes, sir.

10 Q And all the evidence that could provide about Brian
11 Hartline you've provided, correct?

12 A I haven't provided evidence. I'm just giving testimony as
13 a fact witness, sir.

14 Q All I'm trying to get to, sir, is this is all you've got,
15 right?

16 A Yes, sir.

17 MR. EGAN: I have no further questions, Your Honor.

18 THE COURT: All right. We'll recess for lunch at
19 this time. It is now 12:30. We'll reconvene at 1:40 this
20 afternoon, 1:40 this afternoon. Thank you.

21 THE DEPUTY: All rise.

22 (The jurors exit the courtroom.)

23 THE COURT: All right. Thank you. 1:40 this
24 afternoon.

25 MR. EGAN: Your Honor?

Preve - Cross (Dun)

92

1 THE COURT: Yes, sir.

2 MR. EGAN: I'm going to hand something up. We don't
3 need to address it this afternoon, but at some point by
4 tomorrow morning if we could. I've provided it to the opposing
5 counsel and to the co-defendants. It's a charge that I'm going
6 to ask having to do with separate counts that Your Honor give
7 at some point during the course of trial.

8 THE COURT: All right. Thank you very much. All
9 right, we're at recess. Thank you.

10 (OFF THE RECORD; LUNCH RECESS)

11 THE COURT: All right. Everybody ready to go? Why
12 don't you have a seat.

13 THE DEPUTY: All rise.

14 (The jurors enter the courtroom.)

15 THE COURT: Good afternoon. You may be seated. Mr.
16 Egan, you may continue.

17 MR. EGAN: I've completed my cross, Your Honor.

18 THE COURT: You did? All right, fine.

19 MR. DUNCAN: May I proceed, Your Honor?

20 THE COURT: Yes, sir.

21 MR. DUNCAN: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. DUNCAN:

24 Q Good afternoon, Mr. Preve.

25 A Good afternoon.

Preve - Cross (Dun)

93

1 Q Mr. Preve, you and I have never met, have we?

2 A I do not believe so, sir.

3 Q Sir, you first met Mr. Levin back in the 1970's when he
4 was a customer at a bank you were working at, correct?

5 A Yes, sir.

6 Q And you got to know Mr. Levin very well at that time?

7 A Fairly well, he was a good customer.

8 Q You even understood way back then that as a businessman he
9 was always looking to leverage his money and get loans whenever
10 he could to make his investments, correct?

11 A On many occasions, yes sir.

12 Q You knew Mr. Levin to be a man of honor, correct?

13 A Yes, sir.

14 Q And he was someone who honored his contracts, correct?

15 A As far as I know, sir.

16 Q And you would know, wouldn't you, sir?

17 A Well he was a customer of the bank and he always honored
18 what he did with our bank.

19 Q And in the 25 or so, 30 years you knew him, you always
20 knew him to be a man of honor who honored his contracts,
21 correct?

22 A He liked to renegotiate things frequently.

23 Q But then that would be still a contract, correct?

24 A It was still a contract, yes sir.

25 Q You also knew that he was a man who liked to get loans,

Preve - Cross (Dun)

94

1 correct?

2 A Yes, sir.

3 Q And he, as far as you knew, he always paid back his loans,
4 correct?

5 A As far as I remember, yes.

6 Q That's because he had undertaken an obligation and he
7 wanted to honor his obligation, correct?

8 A When he had a legal obligation, yes sir.

9 Q Sir, you first met my client, Mr. Barry Bekkedam, back in
10 approximately February of 2009; is that correct?

11 A Yes, sir.

12 Q And your first meeting was for about 30 seconds?

13 A No, I think it was a little longer than that. I had to do
14 the Banyon review at that time for him so it was probably about
15 30 minutes.

16 Q That was your second meeting. You originally met with him
17 very briefly when Mr. Levin just introduced him to you,
18 correct?

19 A I do not recall that.

20 Q Sir, do you recall testifying in a matter about the events
21 that we're talking about here today back in January 19, 2012?

22 A I could well have. I don't recall it specifically.

23 Q Okay. If we could show for the witness Defense Exhibit
24 1342, and if I may approach, Your Honor?

25 THE COURT: Yes, sir.

Preve - Cross (Dun)

95

1 MR. DUNCAN: I've provided a copy to Mr. Egan and Mr.
2 Ignall.

3 THE COURT: All right.

4 BY MR. DUNCAN:

5 Q It will be easier for you, Mr. Preve, if you would, just
6 take a look at that for a moment and just tell us if that
7 refreshes your recollection as to your testifying in a matter
8 here related somewhat to this in January of 2012. And my
9 question is just simply, does that refresh your recollection
10 about you testifying?

11 A I don't recall my testimony in something called Ballamor
12 Capital Management, but I mean it's an official record, I must
13 have done it. I've given a lot of testimony and a lot of
14 depositions so.

15 Q Sure. And every time you've testified you've tried to
16 tell the truth, correct?

17 A Absolutely.

18 Q So you told these people when you first met with them, you
19 told them that you had met with Mr. Bekkedam and it was
20 probably for 30 seconds and then Mr. Levin and he went on to
21 another meeting. Look at page 9, sir. Look at line 6
22 specifically.

23
24 A Yes, sir, I see that.

25 Q Okay, so your first meeting with them was a very casual

Preve - Cross (Dun)

96

1 meeting. Hi, how are you, introduced, and then he and Mr.
2 Levin, Mr. Bekkedam and Mr. Levin went on to another meeting,
3 correct?

4 A That is what it says.

5 Q And that's what you testified to, correct

6 A Yes. I just don't recollect it.

7 Q Oh, I understand. No, it was what, four years ago now,
8 more than four years ago?

9 A Yes.

10 Q Okay. So you then talk about you did then have a longer
11 subsequent meeting with Mr. Bekkedam, correct?

12 A I did have a longer meeting with Mr. Bekkedam.

13 Q And that was for the purpose of explaining to Mr. Bekkedam
14 about the Banyon Income Fund, or the Banyon entities, correct?

15 A Yes.

16 Q And that meeting lasted for about 30 to 35 minutes, as you
17 previously testified, right?

18 A Yes, sir.

19 Q You knew at that time that Mr. Levin had funds coming into
20 the Banyon Income, coming from hedge funds up in New York,
21 right?

22 A He had lines of credit with three hedge funds, yes sir.

23 Q And Mr. Levin used to describe them somewhat derisively as
24 the hotel hedge funds, correct?

25 A Hotel?

Preve - Cross (Dun)

97

1 Q Hotel hedge funds, a very expensive place you'd have to go
2 to get your money.

3 A I hadn't heard that expression. He described them with
4 very graphic language though.

5 Q Okay, well we don't need to go there right now. We'll
6 just stick with hotel for right now. So he didn't like the
7 hedge funds up in New York, did he.

8 A That is correct.

9 Q And he was looking to replace the hedge funds, correct?

10 A Yes, sir.

11 Q And he looked at Mr. Bekkedam as a potential source to
12 replace the hedge funds, correct?

13 A Yes, sir.

14 Q And that was the purpose for Mr. Levin -- I'm sorry, I
15 think I did this wrong. Levin, or Levin?

16 A Levin.

17 Q Levin, I'm sorry. That was the purpose for Mr. Levin and
18 Mr. Bekkedam getting together initially, correct?

19 A That was my understanding, sir.

20 Q And your role, I think you have testified that you were
21 basically the facilitator or the mechanic, the person who, you
22 know, got the instructions from Mr. Levin and then put his plan
23 into action, correct?

24 A Yes.

25 Q And that was the purpose of your first meeting with Mr.

Preve - Cross (Dun)

98

1 Bekkedam, to explain to him how the process worked, right?

2 A Yes, sir.

3 Q You knew that Mr. Levin was very impressed with Mr.
4 Bekkedam, correct?

5 A Yes, sir.

6 Q And the reason he was impressed with Mr. Bekkedam is Mr.
7 Bekkedam seemed to know what he was talking about when he was
8 talking about finances, right?

9 MR. IGNALL: Your Honor, I object to asking the
10 witness to speculate.

11 THE COURT: Sustained.

12 BY MR. DUNCAN:

13 Q Sir, did Mr. Levin ever tell you that?

14 A Can you repeat the question please?

15 Q Sure. Mr. Levin told you that he was impressed with Mr.
16 Bekkedam's knowledge about finance, correct?

17 MR. IGNALL: I'm going to object. It sounds like
18 hearsay now.

19 MR. DUNCAN: I'm not offering it for the proof of the
20 matter asserted, Your Honor, just offering whether he was told
21 it.

22 THE COURT: Sustained.

23 BY MR. DUNCAN:

24 Q Sir, you took Mr. Bekkedam up to New York to meet with
25 Standards and Poor, correct?

Preve - Cross (Dun)

99

1 A Mr. Bekkedam volunteered to go to New York to meet with
2 Standard and Poor with some other people, yes.

3 Q And the purpose of that was to get a better rating for the
4 Banyon funds, correct?

5 A Yes, sir.

6 Q And after that meeting you told Mr. Levin about how
7 impressed you were with how Mr. Bekkedam performed at that
8 meeting, correct?

9 A Yes, sir.

10 Q And what you were telling him was that Mr. Bekkedam was
11 very good in making these financial presentations, correct?

12 A He was very good at supporting Banyon's financial
13 presentation.

14 Q And so a decision was made by Mr. Levin to see if he could
15 get Mr. Bekkedam to raise funds for the Banyon funds, correct?

16 A Mr. Bekkedam had already convinced Mr. Levin to do that
17 before we went to New York.

18 Q And that's exactly what Mr. Levin asked Mr. Bekkedam to
19 do, correct?

20 A I believe Mr. Bekkedam volunteered to raise up to a
21 billion dollars for Mr. Levin's funds, yes.

22 Q And you understood that's what Mr. Bekkedam was good at,
23 raising money, correct?

24 A Yes, sir.

25 Q So one of the things that was done was a prospectus was

Preve - Cross (Dun)

100

1 put together for something called the Banyon Income Fund,
2 correct?

3 A Yes, sir.

4 Q That was put together by Mr. Levin's lawyers, correct?

5 A It was put together by a law firm that Mr. Levin selected
6 and was approved by Mr. Rovin.

7 Q And Mr. Rovin is Mr. Bekkedam's legal counsel, the general
8 counsel for Ballamor Capital, correct?

9 A He's the managing director and general counsel, yes sir.

10 Q The law firm that was chosen was Gerstein Savage, correct?

11 A Yes, sir.

12 Q And that prospectus was put together in approximately May
13 of 2009, correct?

14 A It was supposedly finished on April 30, 2009.

15 Q I'll give you the day.

16 A Excuse me?

17 Q I'll give you the day. So let's say the end of April.

18 A Yes. It was subsequently modified significantly, but
19 still.

20 Q And it was modified significantly partly on the basis of
21 comments Mr. Rovin had made, Mr. Bekkedam's legal counsel,
22 correct?

23 A I don't know who had the additions but there were several
24 additions to it, yes.

25 Q One of the important parts about the Banyon Income Fund is

Preve - Cross (Dun)

101

1 Mr. Levin personally guaranteed the principal funds of every
2 investor in the Banyon Income Fund, correct?

3 A Ultimately, yes, sir.

4 Q And that would be a good thing for the investors, right?

5 A It was an additional layer of security, yes sir.

6 Q And that was something put in at the request of Mr.
7 Bekkedam and his team, correct?

8 A Yes, sir.

9 Q This was all happening in the second quarter of 2009,
10 correct? This is April 2009. That's the second quarter of
11 2009, second fiscal quarter.

12 A Yes, sir.

13 Q And you testified on direct that Mr. Bekkedam had a number
14 of other deals that he and Mr. Levin were parties to, correct?

15 A Yes, sir.

16 Q And these were all very formal deals put together on paper
17 approved by lawyers, correct?

18 A As far as I recall, yes sir.

19 Q One of the deals that was put together between Mr.
20 Bekkedam and Mr. Levin was an equity investment of
21 approximately \$5 million in Ballamor Capital, correct?

22 A It was a line of credit to Ballamor Capital secured by
23 some type of membership rights, yes sir.

24 Q And what -- you refer to it as line of credit, but what it
25 was actually, it was an equity investment by Mr. Levin into

Preve - Cross (Dun)

102

1 Ballamor Capital for which he was paid dividends, correct?

2 A That was not my understanding but that could have been the
3 way it evolved, but in fact, it was a facility from which
4 Ballamor or Mr. Bekkedam could draw and repay at any time.

5 Q Okay. If you would, could we have Defense Exhibit 1099
6 just for Mr. Preve? And Mr. Preve, I'm going to show you a
7 hard copy. If I may approach, Your Honor.

8 THE COURT: Yes, sir.

9 BY MR. DUNCAN:

10 Q It's just a little easier for you probably to look at it
11 because it's a long agreement. Take a moment, take as much
12 time as you need, Mr. Preve, and just tell us, is that this
13 investment vehicle that you're talking about?

14 A This appears to cover the parties as I recall them that
15 were involved in the credit extension.

16 Q And it wasn't actually between Mr. Bekkedam and Mr. Levin.
17 It was actually between Banyon Capital and Ballamor Capital
18 Management, correct?

19 A In the case of the Banyon side, there was no difference
20 between Banyon Capital and Mr. Levin.

21 Q They were the same entity.

22 A Yes.

23 Q Okay. And Ballamor Capital you understood to be Mr.
24 Bekkedam's company.

25 A I did understand that, yes sir.

Preve - Cross (Dun)

103

1 Q Mr. Bekkedam had a right through his company to make a
2 call at any time, on Mr. Levin's company, in order to take any
3 part of that \$5 million anytime he wanted, correct?

4 A That's what I understood, yes sir.

5 Q And in fact, though, Mr. Bekkedam only requested one call
6 ono that of about a million dollars in the third quarter, July
7 of 2009, correct?

8 MR. IGNALL: Objection. Relevance.

9 THE COURT: Counsel? Relevance?

10 MR. DUNCAN: It goes to the relationship that, they
11 talk about the relationship between Mr. Bekkedam and Mr. Levin.
12 This is how their relationship was put together. This is what
13 was extended by Mr. Levin to Mr. Bekkedam.

14 THE COURT: I'll allow it.

15 BY MR. DUNCAN:

16 Q You can answer, Mr. Preve.

17 A Actually I believe the actual call was made right at the
18 end of June of 2009, and I believe there was another request in
19 October but I don't think it was ever funded.

20 Q And the reason it wasn't funded was because of those
21 problems we heard about, correct?

22 A Mr. Levin's liquidity issues, yes sir.

23 Q And it was not unusual for a company like Mr. Bekkedam's
24 to be looking for a way, a facility, a place that they could
25 draw capital, correct? That's very common for businesses,

Preve - Cross (Dun)

104

1 correct?

2 MR. IGNALL: Objection. Relevance.

3 THE COURT: Sustained.

4 BY MR. DUNCAN:

5 Q Sir, when you were working for Mr. Levin, you worked with
6 a lot of different companies, correct?

7 A Levin companies or other companies?

8 Q Levin companies.

9 A Yes, sir.

10 Q And you're aware that a lot of those companies were
11 startup companies, right?

12 A Some were, yes sir.

13 Q And startup companies need liquidity, correct?

14 A They need capital, yes sir.

15 Q At some point in your relationship with Mr. Levin, he
16 talked to you about investing in a bank, correct?

17 A Mr. Levin had a skewed sense of the importance of
18 investing in banks, historically. Many of his early friends
19 were bankers and in the go-go days of commercial banking they
20 made a lot of money and Mr. Levin always thought that he should
21 be able to do the same thing. I talked him out of it.

22 Q Okay. But you would agree that, you previously in fact
23 testified that Mr. Levin was always talking about investing in
24 a bank, correct?

25 A Yes, sir.

Preve - Cross (Dun)

105

1 Q And you were always dead set against it, correct?

2 A Yes, sir.

3 Q But at some point in the spring of 2009 Mr. Bekkedam and
4 Mr. Levin, Mr. Bekkedam talked to Mr. Levin about that thing
5 Mr. Levin was very interested in, which was investing in a
6 bank, correct?

7 A Yes, sir.

8 Q And Mr. Bekkedam discussed with Mr. Levin about raising
9 capital for a bank called Nova Bank, right?

10 A As it related to inquiring an interest in a Florida bank
11 by Mr. Levin, yes sir.

12 Q Mr. Levin was very interested in acquiring an interest in
13 an Florida bank, wasn't he.

14 A Yes, sir.

15 Q And the reason for that was that he saw all of these
16 deposits sitting over in TD Bank that were a part of the
17 settlement funds and he wanted, Mr. Levin wanted to get control
18 over those funds, correct?

19 A He wanted to be able to get the benefit of those funds.
20 He didn't need control over the funds. He wanted the earning
21 capabilities that those funds represented.

22 Q So this was an idea that Mr. Levin had, correct?

23 A Yes, sir.

24 Q This wasn't an idea Mr. Bekkedam came to him with,
25 correct?

Preve - Cross (Dun)

106

1 A No. The idea that Mr. Levin had was communicated to Mr.
2 Bekkedam and Mr. Bekkedam came up with the idea of Nova Bank
3 acquiring an interest in a Florida bank.

4 Q And one of those Florida banks was the Flagler Bank in
5 Tampa, correct?

6 A No. I believe it was the Flagler Bank in Palm Beach
7 County.

8 Q Okay, my geography is not as good but I'll take your word
9 for it. You live there, right?

10 A Yes, sir.

11 Q Okay, so let's go with what you say. So Mr. Bekkedam and
12 Mr. Levin had these discussions, but you got most of your
13 information about what Mr. Bekkedam said from Mr. Levin,
14 correct?

15 A I believe most of the discussion that I had with -- I mean
16 most of my information about the bank investment came directly
17 from Mr. Bekkedam.

18 Q The investment in the Nova Bank.

19 A No, the investment in the Florida bank.

20 Q The investment in the Florida bank, through Nova.

21 A Ultimately through Nova.

22 Q You understood, as someone who knows something about
23 banking, it would be easier for a bank to acquire another bank
24 than for a private individual, correct?

25 A No, I did not understand that. I was not up to date with

Preve - Cross (Dun)

107

1 the bank acquisition rules. They've changed substantially in
2 the last 30 years.

3 Q Okay. You testified on direct examination that Mr.
4 Bekkedam, someone from Nova, Mr. Larry Rovin, all talked to you
5 about June 30th being a deadline for TARP, correct?

6 A About a TARP application, yes sir.

7 Q About a TARP application but not a TARP deadline?

8 A As I understood it, it was a deadline to get an
9 application in.

10 Q Okay. But you know that Nova had actually applied for
11 TARP back in October of 2008, didn't you?

12 A No I did not.

13 Q Okay. Could we see Government's Exhibit 75 please? Mr.
14 Preve, I'll represent to you that Government's 75 which is in
15 evidence -- can we show it to the jury too please, with the
16 court's permission? It's in evidence.

17 This is a letter from the Treasury Department to
18 Jeffrey Hanuscin, who was the CFO at Nova Bank, related to the
19 TARP application that Nova had put in. Do you understand that?

20 MR. IGNALL: Your Honor, I'm going to object.
21 There's been no foundation laid for this witness to comment on
22 this document.

23 MR. DUNCAN: I'm not asking him to comment on it yet,
24 Your Honor. I'm just telling him that it's a document that
25 relates to the Nova application. He's testified that he

Preve - Cross (Dun)

108

1 thought the Nova application had a deadline of June 30th. The
2 purpose of this is to show that that's not correct. The
3 application was actually in in October of 2008.

4 THE COURT: Do you so stipulate, counsel?

5 MR. IGNALL: We'll stipulate to when the application
6 was.

7 MR. DUNCAN: Thank you.

8 BY MR. DUNCAN:

9 Q Okay. So if you thought that there was a deadline for a
10 TARP application on June 30th, based on the stipulation we just
11 heard you'd be wrong because it had already been in, put in in
12 October of 2008, correct

13 A I don't know that but that letter there says 2009.

14 Q Right. That's the letter, that's the acceptance letter.
15 But Mr. Ignall and I have just stipulated, we've agreed that
16 the application was in 2008. So if you thought it was in 2009,
17 you'd be wrong, right?

18 MR. IGNALL: Objection. It's argumentative.

19 THE COURT: Sustained.

20 BY MR. DUNCAN:

21 Q Sir, when you were talking to the Government agency, you
22 knew that this was a case about TARP, correct?

23 A When I was talking to a Government agent.

24 Q Right. The Government agents in this case. You knew this
25 was a TARP case, right?

Preve - Cross (Dun)

109

1 A No, I did not know it was a TARP case.

2 Q You did not know that.

3 A No, sir.

4 Q Okay. Sir, --

5 A I don't know what this case is about, to tell you the
6 truth. I'm a fact witness. I did not investigate anything on
7 this case.

8 Q And I appreciate that, Mr. Preve. Thank you. You had
9 previously testified that the June 30th deadline that you knew
10 about was related to the change in control application that the
11 bank was filing, correct?

12 A I just knew what Mr. Bekkedam, Mr. Rovin and Mr. Hartline
13 said about needing to have the bank capitalized by June 30,
14 2009.

15 Q Well sir, you've testified previously that you didn't have
16 any specific recollection of why June 30th was an important
17 date. Isn't that correct?

18 A I'll repeat, and I am just repeating what was told to me
19 about the June 30, 2009 deadline.

20 Q Well sir, you were asked back in 2012 whether or not you
21 knew anything specific about what June 30th meant to anybody
22 and you said specifically that you didn't have any
23 understanding of June 30th having any importance. Isn't that
24 correct?

25 A I don't recall that, sir.

Preve - Cross (Dun)

110

1 Q Okay. Would you look at page 62 of your testimony. And I
2 direct you specifically to page 62, lines 10 through 15.

3 A I say again I don't have a specific recollection of why --

4 Q Okay. You don't have to read it. I'm just ask --

5 A -- the June 30th date was important. I don't have any
6 specific recollection.

7 Q And you testified to this four years ago, a time closer in
8 time to the events of 2009 than today, correct?

9 A Yes. I will point out again it says that I think it had
10 something to do with the TARP application and that's what I'm
11 saying now, again.

12 Q Okay, but you didn't have any specific recollection of it
13 though back in 2012, correct?

14 A Should I read that again? Because it's very clear what I
15 meant.

16 Q Certainly. You said "I think it may have had something to
17 do with the TARP application again, but I really don't have --
18 it may be in the files, but I don't have a specific
19 recollection of somebody saying why June 30th was critical,"
20 correct?

21 A I don't have a specific recollection four years ago.

22 Q And you have a specific recollection today?

23 A I just -- I've been shown a lot of e-mails and I'm sure
24 there's something about TARP in one of those e-mails, can
25 almost guarantee it.

Preve - Cross (Dun)

111

1 Q Do you know which e-mails that was?

2 A I don't have a specific recollection of a specific e-mail
3 but I've certainly read quite a few e-mails.

4 Q So at the time that you talked about this back in 2012 you
5 didn't have any deal with the Government, did you.

6 A Deal with the Government.

7 Q Correct. You've made a deal with the Government to
8 testify in order to see if you could get your sentence reduced,
9 correct?

10 A I've had -- my agreement with the Government is to tell
11 the truth and not to implicate any innocent people.

12 Q And your deal with the Government happened in 2015,
13 correct?

14 A Actually, I believe the plea agreement was 2014.

15 Q Okay. So it was two years after your original testimony
16 that we just went through where you had no specific
17 recollection, correct?

18 A Yes.

19 Q Sir, you've previously testified that you always
20 understood that Mr. Levin was going to invest the \$18 million
21 in the holding company of Nova, correct?

22 A I testified that Mr. Levin was responsible -- did a -- he
23 signed a subscription agreement calling for an \$18 million
24 investment in Nova financials, yes.

25 Q And you believed that those funds would be available

Preve - Cross (Dun)

112

1 because there were some funds related to the Banyon funds that
2 were going to become free in approximately October of 2009,
3 correct?

4 A Yes, sir.

5 Q And you believed that that's where all the money, all \$18
6 million in order to meet Mr. Levin's subscription agreement,
7 that's where the money was going to come from, correct?

8 A No, sir.

9 Q Sir, did you previously testify that you always considered
10 that he was going to make this investment from the Banyon
11 funds?

12 A The remaining amount of the investment but part of the
13 investment had obviously been covered by a loan and part of the
14 investment Mr. Bekkedam had committed other resources to fund.
15 So to the extent that anything had to be repaid to cover that
16 investment, yes, that would have come from the funds to be
17 released by the Banyon trust funds.

18 Q So you would have been able to take \$18 million from the
19 Banyon Trust Fund, pay off the \$5 million loan to Nova Bank,
20 and invest the other 13 million into Nova Bank, correct?

21 A Yes, sir.

22 Q Mr. Levin would have been able to. And that was what the
23 plan was, correct?

24 A Yes, sir.

25 Q The problem you had, in addition to having the funds

Preve - Cross (Dun)

113

1 issues, you were also waiting for the Federal Reserve to make
2 their decision as to whether or not the change in control
3 application would be approved, correct?

4 A Can you repeat the question, please?

5 Q Sure. You know what the fed is, right?

6 A Yes, sir.

7 Q The fed is the Federal Reserve, correct?

8 A Yes, sir.

9 Q And the Federal Reserve had a change in control
10 application in from Mr. Levin in order for him to make his
11 investment in Nova Bank, correct?

12 A Yes, sir.

13 Q And you knew that, you believed that the fed had to
14 approve that application before Mr. Bekkedam -- I'm sorry,
15 before Mr. Levin could invest his money, correct?

16 A I knew that the investment had to be approved by the
17 Federal Reserve. I don't know about before or after any funds
18 could have been put up in escrow but I knew they had to approve
19 the investment.

20 Q Okay. The reason Mr. Levin didn't write a check to Nova
21 to just pay for it is he had all of his liquidity tied up in
22 the Banyon entities, correct?

23 A Exactly, sir.

24 Q You were asked, during your questioning earlier this
25 morning you were asked about a letter that was written by you

Preve - Cross (Dun)

114

1 to both the Federal Reserve and to Donna Metcalfe at the
2 Pennsylvania Department of Banking, correct?

3 A Yes, sir.

4 Q And one of the things you said about that letter was that
5 you put in there you made some modifications based on what Mt.
6 Bekkedam had told you, correct?

7 A That is what I said in an e-mail, yes sir.

8 Q And that's true, correct

9 A As far as I recall it is, yes sir.

10 Q Sure. Do you recall specifically what -- you don't recall
11 specifically what Mr. Bekkedam told you, right?

12 A No I do not.

13 Q Okay. Could we show, just for the witness, Defense
14 Exhibit 1172. So if you would, if you'd look down Defense
15 Exhibit 1172 is an e-mail from Mr. Bekkedam to George Levin
16 with a copy to Mr. Bekkedam's legal counsel, Mr. Rovin. It's
17 sent on September 3, 2009, correct?

18 A Yes, sir.

19 Q And Mr. Levin forwarded that e-mail to you, correct?

20 A Can I see the rest of the --

21 Q Sure. I'm sorry. Could you just show the top? I'm
22 sorry, I wasn't trying to hide it from you, it's just the top
23 e-mail. So this is Mr. Levin forwarding the e-mail to you,
24 correct?

25 A Yes, sir.

Preve - Cross (Dun)

115

1 Q And if you would -- and you got this e-mail, right, from
2 Mr. Levin?

3 A Yes, sir.

4 Q Okay. If we could go now to the second page of this
5 document at the very bottom. So Mr. Bekkedam told you -- or
6 I'm sorry, told Mr. Levin and then Mr. Levin forwarded it to
7 you. He said with regards to the letter that you needed to
8 write, what you needed as soon as possible was details about
9 the lawsuits George's company had many years ago, correct

10 A Yes, sir.

11 Q And what he wrote to you, he said needed details about the
12 lawsuit George's company was involved in many years ago and his
13 involvement. The disclosure that we put in the PPM of Banyon
14 Income Fund as well as some other information will be passed on
15 to Brian Hartline to accomplish this request. It may have to
16 actually be sent to them from Frank. Do you see that?

17 A Yes, sir.

18 Q And what he's talking about there is certain disclosures
19 about that Classic Carriage car problem Mr. Levin had had that
20 was put into the Private Placement Memorandum of the Banyon
21 Income Fund, correct?

22 A Yes, sir.

23 Q And so what he's suggesting to you there is you could just
24 go into that legal document, pull out the information, and that
25 will answer the question, correct?

Preve - Cross (Dun)

116

1 A Yes, sir.

2 Q And the second thing he told you was they asked where the
3 potential money would come from and they asked to see the bank
4 statement if it was coming from cash. And they asked to see
5 what assets would be liquidated, if needed, from the balance
6 sheet, correct?

7 A Yes, sir.

8 Q And that's what you're referring to. That's all that Mr.
9 Bekkedam told you, right?

10 A That's all he told me about what, sir?

11 Q About the modifications you should make to the letter.

12 A It may have been, yes, I don't recall. But I just know
13 that he saw the letter and made some changes but I don't know
14 what specifically they were.

15 Q Well those two things we just said, those were two
16 suggestions he had for the letter, correct?

17 A I'm sure he touched upon both of those, yes sir.

18 Q And there's nothing wrong about either of those
19 statements, is there?

20 MR. IGNALL: Objection. I'm not sure what wrong
21 means.

22 THE COURT: Sustained.

23 BY MR. DUNCAN:

24 Q Well is there anything factually incorrect in either of
25 those statements?

Preve - Cross (Dun)

117

1 A Well the disclosure in the PPM would not have satisfied
2 the fed. I believe that we had to have the attorney, George's
3 litigator, do a complete summary of the Classic Motor
4 Carriages. But basically those are the two issues that the fed
5 wanted answered, so you know, they touch on the two issues.
6 I'm not saying that his response would have sufficed with the
7 fed.

8 Q But there's nothing incorrect, there's nothing factually
9 false in anything he told you, correct?

10 A Not that I see in those two statements, sir.

11 Q And then you've actually had to get Mr. Levin's own lawyer
12 on board in order to satisfy the regulators, correct?

13 A Yes, sir.

14 Q That wasn't done by Mr. Bekkedam, correct?

15 A No, sir.

16 Q We also saw some e-mails this morning in late October of
17 2009. I know you said you saw a lot of e-mails, but those are
18 the e-mails where Mr. Bekkedam is imploring you to get George
19 to make some investment in Nova Bank, correct?

20 A Yes, sir.

21 Q And the reason he was doing that was to -- because Mr.
22 Levin had a subscription agreement and he had agreed to make
23 investments in Nova Bank, correct?

24 A Yes, sir.

25 Q He was under an obligation to do so.

Preve - Cross (Dun)

118

1 A Is that a question?

2 Q Yes. He was under an obligation to do so, correct?

3 A He had a subscription agreement, yes sir.

4 Q The funds that you were waiting for were those funds that
5 still weren't coming from the settlement funds, correct?

6 A Yes, sir.

7 Q So Mr. Levin told that to Mr. Bekkedam, that the funds
8 still weren't available, correct?

9 A I'm not aware of that, sir.

10 Q The funds weren't available though, were they.

11 A The amount of money being requested could have been gotten
12 from the funds, and in fact I had requested them.

13 Q You actually requested that the funds release the
14 sufficient amount of money, the 3 million or 5 million in order
15 to meet the commitment, or partially meet the commitment,
16 correct?

17 A The 3 million, yes sir.

18 Q So you expected that 3 million to be invested into Nova,
19 correct?

20 A Yes, sir.

21 Q Sir, are you familiar with the term an accredited
22 investor?

23 A Excuse me?

24 Q Are you familiar with the term an accredited investor?

25 A Yes, sir.

Preve - Cross (Dun)

119

1 Q An accredited investor is basically a wealthy person who's
2 used to investing, correct?

3 A Yes, sir.

4 Q And you agree that Mr. Levin certainly qualified as that,
5 correct?

6 A Yes, sir.

7 Q And it was his intention to make an investment into Nova,
8 correct?

9 A He had agreed to that with the subscription agreement, yes
10 sir.

11 Q And so that's going to be an investment by Mr. Levin into
12 Nova, correct?

13 A Yes, sir.

14 Q You were not aware that the 5 million, the original 5
15 million that was lent to Mr. Levin, that had also already been
16 invested in the holding company. You weren't aware of that,
17 were you.

18 A Obviously I knew that the funds had been transferred to an
19 escrow account. What happened after that I was not aware.

20 Q But you know now that subsequently there was an actual
21 purchase of stock with that 5 million, correct?

22 A Actually I was told that but I've never seen the stock
23 certificate so that would usually evidence the finalization of
24 a transaction but I never did see it.

25 Q You never saw the stock certificates but you don't have

Preve - Cross (Dun)

120

1 any reason to disbelieve that it actually occurred, right?

2 A No, I do not.

3 Q Okay. Sir, do you know an individual by the name of
4 Douglas Von Allmen?

5 A Yes I do.

6 Q And Mr. Von Allmen was someone who also invested in the
7 Banyon Income Fund, correct?

8 A Yes, sir.

9 Q However, Mr. Von Allmen was not actually a client of Mr.
10 Bekkedam's, was he.

11 A I know that it had been, it was a new relationship that
12 centered around Mr. Von Allmen's investment in Banyon Income
13 Fund. I don't know how familiar each other were with each
14 other. I don't recall.

15 Q Mr. Rothstein was also a friend of Mr. Von Allmen's,
16 correct?

17 A I believe so, sir.

18 Q And it actually was Mr. Rothstein who approached Mr. Von
19 Allmen about the opportunity of investing in the Banyon Income
20 Fund, correct?

21 MR. IGNALL: Objection. Beyond the scope and
22 relevance.

23 THE COURT: Sustained.

24 BY MR. DUNCAN:

25 Q The Banyon Income Fund was part Ballamor Capital people

Preve - Cross (Dun)

121

1 and part somebody else, correct?

2 A Are you talking about the equity partners?

3 Q Yes.

4 A I thought the equity partners were all Ballamor Capital
5 investors.

6 Q Douglas Von Allmen was one of those equity partners,
7 correct?

8 A Yes, sir.

9 Q You don't know what his status was. You just don't know.

10 A I assume that he was signed up by Barry when he made the
11 investment.

12 Q But you don't know.

13 A I do not know for a fact.

14 Q Mr. Preve, you were originally sentenced for that
15 conspiracy to commit wire fraud with relation to these
16 activities back in February of 2015, correct?

17 A Yes, sir.

18 Q And you were ordered to report to prison on approximately
19 June 22, 2015, correct?

20 A I don't recall the date but approximately, yes sir.

21 Q And you knew at that time your lawyer and the Government
22 lawyers asked that you be allowed to remain free in order for
23 you to testify, correct?

24

25 A I don't think so. That was the second extension, but the

Preve - Redirect (Ign)

122

1 first extension was based on medical issues I believe.

2 Q Okay. So if I have a document that shows the Government
3 agreed to that extension, you wouldn't disagree with me, would
4 you?

5 A Oh no, the Government agreed to every extension, sir.

6 Q Okay. So then you were ordered to report to prison in
7 January of 2016, correct?

8 A Yes, sir.

9 Q And again the Government came in and asked that you stay
10 out of prison for a little bit longer so that you could testify
11 in this matter, correct

12 A One of the reasons, yes sir.

13 Q And you now have a new reporting date for sometime after
14 this, correct?

15 A Yes, sir.

16 Q So based on this you've stayed out of jail for almost a
17 year, a little bit more than a year, correct?

18 A Yes, sir.

19 MR. DUNCAN: Your Honor, may I have a moment, please?

20 THE COURT: Surely.

21 MR. DUNCAN: Thank you, Your Honor, I appreciate the
22 court's indulgence. I have no further questions for this
23 witness.

24 REDIRECT EXAMINATION

25 BY MR. IGNALL:

Preve - Redirect (Ign)

123

1 Q Will you bring up Exhibit 63. And scroll down. Let's go
2 to the next page. I'm sorry, let's look at Exhibit 64. It
3 should be the 19th page of this. Do you recall what this was,
4 Mr. Preve?

5 A Yes, sir.

6 Q And what was this?

7 A This is a balance sheet, a statement of condition of Mr.
8 and Mrs. Levin as of March 31, 2009 assets and liabilities and
9 net worth.

10 Q Do you see where it says Note: table and other loans \$5
11 million?

12 A Yes, sir.

13 Q Do you know whether that was the loan from Nova Bank we
14 talked about?

15 A No, sir, it was not.

16 Q And how do you know that?

17 A Because the Nova Bank loan occurred on June 30, 2009 and
18 this statement is at March 31, 2009.

19 Q If we could turn to Exhibit 15. And if we could publish
20 this to the jury.

21 THE COURT: Any objection?

22 MR. EGAN: No, Your Honor.

23 MR. ENGLE: No, Your Honor.

24 THE COURT: All right.

25 BY MR. IGNALL:

Preve - Redirect (Ign)

124

1 Q Do you see the discussion here about getting information
2 to Nova Bank?

3 A Yes, sir.

4 Q Did this have anything to do with the loan from Nova Bank
5 that we talked about?

6 A No, sir.

7 Q How do you know that?

8 A Because the subject is selling of bonds and assumption of
9 Nova debt. On April 3rd there wasn't any consideration of a
10 loan from Nova Bank for any other purpose at this time.

11 Q I'd like to turn you to Government's Exhibit 301 that I
12 believe Mr. Egan asked you about. If we could go to, I believe
13 it's the last page of this document. Page 24, I'm sorry. Are
14 you familiar with what Mr. Levin's signature looks like?

15 A Yes, sir.

16 Q And if we look at the bottom of this document, do you see
17 a signature there?

18 A Yes, sir.

19 Q Does that look to you like Mr. Levin's signature?

20 A As I testified to earlier, that is not his signature.

21 Q I believe, it looks like Exhibit 40. I'd like to move
22 this into evidence now.

23 MR. ENGLE: No objection.

24 THE COURT: Admitted.

25 MR. IGNALL: May I publish it to the jury?

Preve - Redirect (Ign)

125

1 THE COURT: Yes, sir.

2 BY MR. IGNALL:

3 Q If we could look at the second page, I believe Mr. Egan
4 asked you a question too about that. Let's look at the middle
5 of the page. Do you see an e-mail there from Mr. Rovin?

6 A Yes, sir.

7 Q And what's the date at the top of that e-mail?

8 A 6-29 2009 at 2:38 p.m.

9 Q And what is Mr. Rovin seeking in that e-mail on June 29th?

10 A He wants a reconciliation between the tax returns and the
11 financial statements, and he wants a cash flow for Mr. Levin.

12 Q And what date did this loan get funded to Mr. Levin?

13 A June 30, 2009.

14 Q Can you bring up Government's Exhibit 64. Do you have any
15 understanding as to what the amount of money Mr. Levin would
16 have to invest in order to trigger a need for approval from a
17 bank regulator?

18 A I don't think I know that, sir.

19 Q In the questions, if we could go to the next page.
20 Actually I take that back. I'm confused. I'd like to go to 63
21 please. If we look at question d, can you read what it says
22 there about the source and amount of funds?

23 A "State the source and amount of funds or other
24 consideration used or to be used in making the purchases and if
25 any of the purchase price or proposed purchase price is

Preve - Redirect (Ign)

126

1 represented by funds or other consideration borrowed or
2 otherwise obtained for the purpose of acquiring, holding or
3 trading of shares, give a description of the transaction and
4 the names of the parties thereto."

5 Q Does this say anything about only looking for funds that
6 were going to be used prospectively as opposed to those that
7 had already been used?

8 MR. EGAN: Objection. Leading.

9 THE COURT: Overruled.

10 THE WITNESS: No, sir.

11 BY MR. IGNALL:

12 Q Do you know whether the State of Pennsylvania and the
13 Federal Reserve ever approved Mr. Levin to be an owner of
14 whatever percentage?

15 A Yes, sir, they did.

16 Q And Mr. Egan asked you a number of questions about the e-
17 mails you had where you were hoping that wouldn't happen.
18 Remember those e-mails?

19 A Yes, sir.

20 Q But indeed, did the state approve it?

21 A Yes, sir.

22 Q And did Mr. Levin invest any more?

23 A No, sir.

24 Q You testified a moment ago to some questions by Mr. Duncan
25 about trying to get \$3 million from the Banyon Income Fund. Do

Preve - Redirect (Ign)

127

1 you remember that?

2 A Three million was coming from trust funds to be released
3 by Mr. Rothstein.

4 Q Yes. Did you ever get that \$3 million?

5 A No, sir.

6 Q Let's turn to Government's Exhibit 81. Do you remember,
7 sir, me asking questions about where the rest of the money was
8 going to come for the \$18 million Mr. Levin was going to
9 invest?

10 A It's been more than five minutes so I don't remember. I
11 don't recall.

12 Q All right, well let's turn to Exhibit 110. Well let's
13 see, what's the date of Exhibit 81?

14 A September 8, 2009.

15 Q Did you have any correspondence with Mr. Bekkedam after
16 that?

17 A I'm sure I did, sir.

18 Q Let's pull up Exhibit 110. If you could read that. Did
19 Mr. Bekkedam say anything here about the source of additional
20 funding from Mr. Levin?

21 A Do you want me to read it?

22 Q Well let me ask you this. Based on your communications
23 with Mr. Bekkedam, did he ever suggest how much money Mr. Levin
24 would have to put into Nova as of October 21?

25 A I guess it says 10 million. It's kind of confusing.

Preve - Redirect (Ign)

128

1 Q Can we just read that third paragraph?

2 A "We had originally budgeted per George's subscription
3 agreement, 18 million, with 10 million coming in financing from
4 the bank, but it looks as if we only need 10 million with it
5 all coming back in financing from the bank. Not a lot but it
6 seems to be headed that way."

7 Q Mr. Duncan asked you some questions about Mr. Levin
8 personally guaranteeing the funds of investors who came in from
9 Ballamor. Do you remember those questions?

10 A Yes, sir.

11 Q So if, as turned out to be the case, the Banyon investment
12 lost value, what effect did that have or would that have on Mr.
13 Levin?

14 A It would have severely crippled his ability to honor his
15 guarantee.

16 Q Back to Mr. Duncan's questions about Mr. Levin buying a
17 Florida bank. Do you recall who first brought up the idea of
18 Mr. Levin getting any shares in Nova Bank?

19 A I'm sure it was Mr. Bekkedam.

20 Q Do you remember Mr. Levin talking about Nova Bank before
21 he met Mr. Bekkedam?

22 A Never.

23 Q Mr. Egan asked you a number of questions about how wealthy
24 Mr. Levin was in June of 2009. Do you recall that?

25 A Yes, sir.

Preve - Redirect (Ign)

129

1 Q Was much of his wealth tied up in the Banyon type
2 investments as of that date?

3 MR. EGAN: Objection.

4 THE COURT: Sustained.

5 BY MR. IGNALL:

6 Q Do you know, are you familiar with the source of Mr.
7 Levin's wealth as of June of 2009?

8 A Yes, sir.

9 Q And how much of that, if any, was involved in the Banyon
10 investments as we call them?

11 A Probably around 65 percent, sir.

12 Q And did that include how much he was guaranteeing to other
13 people?

14 A Yes, it would have, yes.

15 Q And Mr. Egan asked you some questions about how after
16 Halloween, he said something to the effect of Mr. Levin wasn't
17 broke. Do you remember those questions?

18 A Yes, sir.

19 Q Well were you familiar with Mr. Levin's finances after
20 that?

21 A Yes, sir.

22 Q Was Mr. Levin under any financial strain after that?

23 A Very much so, sir.

24 Q Prior to October, was Mr. Levin paying you?

25 A Yes, sir.

Preve - Recross (Ega)

130

1 Q Did Mr. Levin pay you after October?

2 A No sir, he did not.

3 MR. IGNALL: No further questions.

4 MR. EGAN: Briefly, Your Honor.

5 RECROSS-EXAMINATION

6 BY MR. EGAN:

7 Q Good afternoon.

8 A Good afternoon, sir.

9 Q I just heard you correctly, right? You said that 65
10 percent of his worth was tied up in Banyon, give or take?

11 A Yes, sir.

12 Q Okay. So I'm not really great at math but 65 percent of
13 400 million is a pretty big number, isn't it.

14 A Yes, sir.

15 Q But 35 percent of 400 million is north of 30 million
16 bucks, isn't it?

17 A Yes sir, but you'd have to understand what was happening
18 in the national economy at that time that gravely impacted that
19 35 percent. The real estate market, which primarily was the
20 rest of Mr. Levin's equity, had also been severely impacted.

21 Q So what we're really talking about is cash, right?

22 A He had no cash.

23 Q I heard you. But what you're basically saying to me is
24 although he was still worth 35 percent of 400 million, he had
25 no cash.

Preve - Recross (Ega)

131

1 A Precisely, sir.

2 Q And when you have no cash, at least you still have real
3 estate, right?

4 A Yes, sir.

5 Q And I believe you talked about the real estate market
6 going down when I was speaking to you a little while back,
7 right?

8 A Yes, sir.

9 Q That actually happened a little earlier than this, didn't
10 it? Didn't that happen in 2007?

11 A No.

12 Q You don't remember real estate started to go down before
13 the big crash of 2008?

14 A Some types of real estate but most of his equity was in
15 commercial real estate and it really tanked in 2009 severely.

16 Q Regardless, he's still worth 35 percent of \$400 million,
17 correct? You said it, not me.

18 A Yeah, I'm talking about, I'm discussing assets and I'm not
19 talking about the leverage that those assets had. Leverage
20 does not go down. The value of the real estate goes down. So
21 his net worth was almost wiped out.

22 Q Sir, you just testified he was worth 35 percent of \$400
23 million and that that was in real estate, did you not?

24 A Yes, sir.

25 Q Okay. And one of those things he owned that was real

Preve - Recross (Ega)

132

1 estate was the Madison House, correct?

2 A Yes, sir.

3 Q Now, you testified this morning that you didn't know that
4 he had ultimately given a security interest in that Madison
5 House to Nova Bank as part of trying to keep them from
6 foreclosing on his loan.

7 A That is correct. I did not know that.

8 Q But you did know that he had tried to give them an
9 interest in the house in Devon to do that.

10 A I know he tried to give them interest in the Madison House
11 too. I'm not saying that. It wasn't ever consummated when I
12 was around.

13 Q So in the spring of 2010 after all of this stuff is over,
14 right, before you leave Mr. Levin's employ, Nova is requesting
15 that he give them collateral in Madison House, correct?

16 A That was one of the proposals that Mr. Levin made to Nova,
17 yes sir.

18 Q And that's because he still owed them money on his loan.

19 A He still owed them \$5 million, yes sir.

20 Q Correct. And one of the things M. Levin wanted to say
21 was, well you've got 5 million of my stock, why don't you sell
22 that. Correct?

23 A Yes, sir.

24 Q And that's because the loan had value, right?

25 MR. IGNALL: Objection. Beyond the scope of cross

Preve - Recross (Ega)

133

1 and I also think it's argumentative.

2 THE COURT: Overruled.

3 BY MR. EGAN:

4 Q Right?

5 A The loan had value?

6 Q Yeah, it was worth \$5 million.

7 A Yeah, he owed \$5 million to the bank, yes sir.

8 Q And the stock had value too, right?

9 A Not every much evidently.

10 Q Sir, he wasn't asking for it back because it was
11 worthless, was he?

12 A Asking for it back. I don't understand --

13 Q He was asking Nova to sell his stock to pay for part of
14 what he owed, correct?

15 A Yes, sir.

16 Q Because the stock had value. I'm not asking how much; it
17 had value.

18 A It was worth something. The bank was not bankrupt, yes
19 sir.

20 Q So Nova had the stock and the loan, correct?

21 A Yes, sir.

22 Q So they were clearly in a better position than if they
23 only had the loan, correct?

24 MR. IGNALL: Objection. Argumentative.

25 THE COURT: Sustained.

Preve - Recross (Ega)

134

1 BY MR. EGAN:

2 Q Now you said you didn't know that he ever got stock, and I
3 apologize if you were gone. Could we show him D-123 please.
4 And this is dated April 19, 2010. Were you still with Mr.
5 Levin at that point?

6 A No, I left on April 10th.

7 Q So you wouldn't be aware that he had voted his shares in a
8 proxy at that time.

9 MR. IGNALL: Objection.

10 THE COURT: Sustained.

11 MR. EGAN: Your Honor, may the witness be shown D-119
12 please.

13 THE COURT: Yes.

14 BY MR. EGAN:

15 Q And if we could go to page 2. Did you ever see that
16 before, sir?

17 A I do not believe so, sir.

18 MR. EGAN: Nothing further, Your Honor.

19 MR. ENGLE: No, thank you, Your Honor.

20 MR. IGNALL: Nothing further from the Government,
21 thank you.

22 THE COURT: All right. Thank you, sir, you may step
23 down. Watch your step please.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Ladies and gentlemen, if you want to

Madiany - Direct (BAR)

135

stand up and stretch your legs, you may do so. Yes, ma'am.

THE JUROR: May I take a break?

THE COURT: Absolutely. Let's take our fifteen-minute break.

(The jurors exit the courtroom.)

THE COURT: All right. Fifteen minutes please.

MR. ENGLE: Thank you, Your Honor.

MR. IGNALL: Thank you.

(OFF THE RECORD)

THE COURT: Okay, are we ready? All right.

(The jurors enter the courtroom.)

J O S E P H M A D I A N Y, Government'S WITNESS, SWORN

THE DEPUTY: Please state and spell your name for the record and you may have a seat.

THE WITNESS: My name is Joseph Madiany, J-O-E-S-P-H, the last name is Madiany, -A-D-I-A-N-Y.

MS. BARRY: May I inquire, Your Honor?

THE COURT: You may proceed.

MS. BARRY: Thank you.

DIRECT EXAMINATION

BY MS. BARRY:

Q Good afternoon, Mr. Madiany.

A Good afternoon.

Q Where do you currently live?

A I live in Lynwood, Pennsylvania.

Madiany - Direct (BAR)

136

1 Q And what is your country of origin?

2 A Kenya.

3 Q And how long have you been in the United States?

4 A Over 30 years now.

5 Q And did you go to college?

6 A Yes.

7 Q And what did you major in college?

8 A About the laws of financing and economics.

9 Q Did you get any post-college degree?

10 A Yeah, MBA in managerial accounting.

11 Q And sir, have you been in the banking industry for most of
12 your career?

13 A Yes.

14 Q And prior to 2006, what banks did you work for?

15 A Prior to 2006 I worked for PNC Bank and also First Union.

16 Q And how many years altogether did you work at those two
17 banks, approximately?

18 A Those two banks, about 15 years.

19 Q And in 2006 where did you start working?

20 A 2006 I started working in April at Nova Bank.

21 Q So April of 2006?

22 A Yes.

23 Q And who hired you to work at Nova Bank?

24 A The chief credit officer by the name of Mr. Joe Lucky.

25 Q And do you know who Brian Hartline is?

Madiany - Direct (BAR)

137

1 A Yes.

2 Q And who was Brian Hartline?

3 A He's the CEO, he was the CEO at that time.

4 Q And did he interview you before you got your job?

5 A Yes.

6 Q And do you see Mr. Hartline here today?

7 A Yes I do.

8 Q And can you identify where he his?

9 A Yes.

10 MS. BARRY: Your Honor, let the record reflect that
11 the witness identified the defendant, Brian Hartline.

12 THE COURT: The record shall so reflect.

13 BY MS. BARRY:

14 Q Mr. Madiany, what were you hired to do at Nova Bank?

15 A I was hired as a senior credit officer, VP.

16 Q And as a senior credit officer, and you're saying that was
17 a VP. Do you mean -- what does VP mean?

18 A Vice president.

19 Q And what were your duties as a senior credit officer?

20 A The credit officer's function at that time was to
21 underwrite and also to recommend loans for approval by the loan
22 committee. What we did was to gather the financial statements
23 from the loan officers, do the due diligence, and work through
24 it, look in the collateral, the cash flow and the guarantee
25 before we make a recommendation for the loan.

Madiany - Direct (BAR)

138

1 Q Okay. So what you described just then is what you would
2 consider the loan process.

3 A Essentially, yes.

4 Q And I know you describe it, but just if you could step the
5 jury through the underwriting, what did that entail?

6 A The underwriting entails gathering all the financial
7 statements which were brought before the underwriter who will
8 look at the business and also look at the individuals to whom
9 the loan will be forwarded to. We look at the financial
10 strength of the company. We evaluate the collateral and also
11 the strength of the personal guarantors who are mainly
12 principal owners of the companies.

13 Q And is looking at all of that information important to
14 know whether or not the bank will get paid back if they make a
15 loan?

16 A Yes.

17 Q Now who generally brought the loan application for you for
18 review or your department?

19 A The loan officer, the relationship manager.

20 Q And you described all of the information that you would
21 need to assess a loan. Did that information go onto a
22 particular document at the bank?

23 A Yes.

24 Q And what was that document called?
25

Madiany - Direct (BAR)

139

1 A The document was called a Risk Assessment Summary.

2 Q And the Risk Assessment Summary, is that sometimes
3 referred to as the RAS?

4 A Yes.

5 Q And just to be clear, if you're going to make a
6 recommendation for approval, what are the three main factors
7 you would look at?

8 A The three main factors were the performance of the company
9 so to make sure that the bank gets paid.

10 Q Is that sometimes called the cash flow available to the
11 company?

12 A Yes.

13 Q Okay. I'm sorry, I interrupted you.

14 A The second part will be to examine the collateral, make
15 sure that at least we have the second way out of the loan. And
16 the third is to assess the strength of the personal guarantees
17 being provided by the principals of the company.

18 Q And all of this information goes onto the Risk Assessment
19 Summary?

20 A Yes.

21 Q And when you're looking at a loan for approval,
22 approximately how many years of financials are you reviewing?

23 A Yeah. The company, the bank policy requires two years of
24 annual performance or tax returns.

25 Q So two years at least?

Madiany - Direct (BAR)

140

1 A Yes.

2 Q And is the purpose of the loan relevant to the
3 underwriting?

4 A Yes.

5 Q And will you please explain why it's relevant?

6 A The purpose of the loan normally is the owner would
7 provide it to the bank so at least we know that the money being
8 loaned out is going to fill in that purpose and make sure that
9 purpose is going to be beneficial to the company and for the
10 bank to be paid.

11 Q So the purpose of the loan is an indication on the
12 strength of being paid back.

13 MR. EGAN: Objection.

14 THE COURT: Sustained.

15 BY MR. BARRY:

16 Q So again, you had mentioned the strength of the company
17 when looking at the purpose of the loan?

18 A Yes.

19 Q Okay. And why was that important?

20 A That was important because of course, number one, it has
21 to be a purpose which the bank has an appetite for. And then
22 secondly, to make sure that that purpose is going to benefit
23 the company performance so that eventually the bank will be
24 repaid.

25 Q Okay. Who reviewed, at Nova Bank who reviewed the loans

Madiany - Direct (BAR)

141

1 and made recommendations for approval?

2 A The underwriters are the ones who prepared the RAS and
3 then they make the recommendation for approval before it's
4 finally approved by the loan committee.

5 Q Okay. So the loan committee makes the final decision?

6 A Yes.

7 Q And who was on the loan committee?

8 A Senior bank management, mostly senior vice presidents.

9 Q Was Mr. Hartline part of the loan committee?

10 A Yes.

11 Q And did you sit on the loan committee?

12 A Yes, I sat on the loan committee.

13 Q Did you have any voting authority on the loan committee?

14 A No.

15 Q What was your, what were your duties on the loan
16 committee?

17 A My duties for the loan committee was to bring in the
18 agenda and also to serve as the committee secretary.

19 Q So when you say serve as the committee secretary, did that
20 mean preparing the minutes for the loan committee?

21 A Yes.

22 Q What loans had to go to the loan committee to be approved?

23 A At the beginning of 2006 any loan beyond, above \$750,000.

24 Q Okay. So if it was a loan more than \$750,000, it would
25 have to go to the loan committee to be approved.

Madiany - Direct (BAR)

142

1 A Yes.

2 Q If it was under -- what happened with loans that were
3 under \$750,000?

4 A At that point we had approval matrix between the vice
5 president and the senior V.P.

6 Q And some point in time did all loans have to go before the
7 loan committee?

8 A Yes.

9 Q And approximately when did every single loan that the bank
10 was making have to go to the loan committee?

11 A I don't recall the exact date, but after the economic
12 collapse, recession came in, each and every loan was to be
13 approved by the loan committee.

14 Q So was that in approximately 2009?

15 A Approximately, yes.

16 THE COURT: Could you keep your voice up please, sir.

17 THE WITNESS: Approximately 2009.

18 BY MS. BARRY:

19 Q And if you could, if it's easier just to speak right into
20 the microphone, it can make your voice seem louder, sir.

21 A Okay, thank you.

22 Q Now did you have anything, or did you have any involvement
23 with the bank's TARP application?

24 A No.

25 Q Now in June of 2009 do you recall whether or not the bank

Madiany - Direct (BAR)

143

1 approved a loan for an individual named George Levin?

2 A In June of 2009, no, no.

3 Q May I show you what's been marked as Government's Exhibit
4 43 for the witness please. And what is Government's Exhibit
5 43?

6 A That is a Nova Bank Risk Assessment Summary document.

7 Q And what is the date of this RAS?

8 A June 30, 2009.

9 Q And did you underwrite this loan?

10 A Yeah, I underwrote this loan.

11 Q Okay. And who is the individual who the loan is being
12 made to?

13 A The customer's name in this is George G. Levin.

14 Q So do you recall that on June 30, 2009 that the bank made
15 a loan to an individual named George Levin?

16 A The documents were prepared at that time, yeah, it was for
17 this customer, George G. Levin.

18 Q Okay. Do you recall doing the underwriting for this Levin
19 loan?

20 A Yes.

21 Q And what was the amount of the loan for?

22 A The amount of the loan was \$5 million.

23 Q Okay.

24 MS. BARRY: Your Honor, the Government would move for
25 the admission of Government's Exhibit 43.

Madiany - Direct (BAR)

144

1 MR. ENGLE: No objection.

2 MR. EGAN: No objection.

3 THE COURT: Admitted.

4 MS. BARRY: May it be published, Your Honor?

5 THE COURT: Yes.

6 BY MS. BARRY:

7 Q Now who brought, who told you that the bank was going to
8 make a loan to George Levin?

9 A This loan request was made by Thomas Patterson.

10 Q And who is Thomas Patterson?

11 A He's the manager of the account at that time?

12 Q Did Mr. Patterson indicate if there was any kind of timing
13 issue related to this loan?

14 A It was brought in to be done within a matter of about two
15 days.

16 Q And what is the date, June 30?

17 A June 30 was the date of the end of the second quarter of
18 that year.

19 Q So is that the end of the second quarter is June 30th?

20 A Yes.

21 Q Prior to this loan request, had you ever approved a loan
22 for Mr. Levin before?

23 A No.

24 Q Now looking at this Risk Assessment Summary, is this a
25 document that you prepared?

Madiany - Direct (BAR)

145

1 A I have to look at it in the entirety.

2 MS. BARRY: Yes. May I, Your Honor, approach the
3 witness?

4 THE COURT: Yes.

5 BY MS. BARRY:

6 Q Mr. Madiany, I'm showing you a hard copy of Government's
7 Exhibit 43. Please take your time and look through that
8 document.

9 A Yes, this was the document.

10 Q Okay. So did you prepare what's been marked as
11 Government's Exhibit 43?

12 A Yes.

13 Q And as far as the information on the individual receiving
14 the loan, if we can, just that first portion, if we can go to
15 the first page and just highlight that first, make that the
16 first top portion large. Thank you. Okay, again, looking --
17 is your name on here as the analyst?

18 A Yes.

19 Q And again, who is the individual receiving this loan?

20 A George G. Levin.

21 Q And if you look at the requested loan amount, -- I'm
22 sorry, if you go back to that top portion. And what's the
23 requested loan -- I'm sorry. That's the requested commitment.
24 If we go down further to the second -- what is the proposed
25 amount of the loan?

Madiany - Direct (BAR)

146

1 A \$5 million.

2 Q And what is the purpose of the loan?

3 A Financial investment.

4 Q And if we go down and look at the collateral, is this loan
5 secured by any collateral?

6 A It's unsecured.

7 Q Now in your experience at Nova was this the largest
8 unsecured loan that was approved?

9 A Yes.

10 Q And so what was this loan based on, approving this loan?

11 A This loan was based on the performance based on the amount
12 which is being requested and also the guarantees provided by
13 the individual and also by other companies which the individual
14 was an interest or owned.

15 Q If we could look at the second page please. If we look at
16 the top portion, and the purpose of the loan was for investment
17 purposes. Is that what you understood the purpose to be?

18 A Yes.

19 Q Okay. And looking at transaction comments facility one.
20 Do you see that?

21 A Yes.

22 Q And what is the first sentence, first two sentences say?

23 A Mr. George G. Levin, borrower, is requesting \$5 million
24 non-revolving commercial line of credit from Nova Bank. The
25 loan would be used by Mr. Levin for investment purposes.

Madiany - Direct (BAR)

147

1 Q And did those investment purposes, anywhere were you ever
2 told that it was going to be used to purchase Nova Bank stock?

3 A No.

4 Q Were you ever told that as you were preparing the
5 underwriting for this loan?

6 A No.

7 Q Now did other individuals have access to this Risk
8 Assessment Summary?

9 A Yes.

10 Q Who else had access to the Risk Assessment Summary?

11 A This was an unprotected document, meaning other
12 underwriters and also loan officers could access it.

13 Q Okay. So did Mr. Patterson have access to it?

14 A Yes.

15 Q Did Mr. Hartline have access to it?

16 A Yes.

17 Q Now as the secretary of the loan committee, you take
18 meeting minutes; is that right?

19 A Right.

20 Q And I'd like you to take a look at what's been marked as
21 Government's Exhibit 41. And what is Government's Exhibit 41?

22 A That is the minutes of the loan approved on June 30, 2009.

23 MS. BARRY: And Your Honor, the Government moves for
24 the admission of Government's Exhibit 41.

25 MR. ENGLE: No objection.

Madiany - Direct (BAR)

148

1 MR. EGAN: No objection.

2 THE COURT: Admitted.

3 BY MS. BARRY:

4 Q And looking at the loan committee minutes meeting of June
5 30, 2009, did you record the members of the committee who were
6 present at the meeting?

7 A Yes.

8 Q And is Mr. Hartline, did he attend that meeting?

9 A Yes.

10 Q And if you could take a look at the body of the meeting
11 minutes, is there any mention of the George Levin loan of \$5
12 million unsecured?

13 A No mention.

14 Q I'd like to show you now what's been -- well let me ask
15 you this. In the second, number two, item number two, what's
16 item number two?

17 A It says the committee reviewed and performed ratification
18 of loans approved report for Nova Bank for June 2009 on a
19 motion by G. Patterson, seconded by J. Hanuscin, the report was
20 approved.

21 Q So now I'd like you to take a look at what's been marked
22 as Government's Exhibit 41A. And looking at 41A, what is 41A?

23 A 41A is a documentation that kind of summarizes all the
24 loans which were performed during that month and approved.

25 Q And so are those the ones that the committee approved in

Madiany - Direct (BAR)

149

1 item two from the previous exhibit 41? And I can show you a
2 hard copy if it makes it easier.

3 A Yes, please. Let me see a hard copy.

4 MS. BARRY: May I approach, Your Honor?

5 THE COURT: Surely.

6 MS. BARRY: I'm providing the witness with a hard
7 copy of Government's Exhibit 41 and 41A.

8 BY MS. BARRY:

9 Q And if you would just review item number two. And is 41A
10 a list of the loans that were approved at that meeting? Is 41A
11 the list of the loans for June 2009 that were approved at the
12 June 30, 2009 meeting?

13 A Yes.

14 Q Okay, thank you. And having looked at Government's
15 Exhibit 41A, which was the list of the loans, is the George
16 Levin \$5 million unsecured loan listed on 41A?

17 A I don't see it; it's not listed.

18 MS. BARRY: Your Honor, if I failed to do this, I
19 request for the admission of 41A.

20 MR. EGAN: No objection.

21 MR. ENGLE: No objection.

22 THE COURT: Actually you did, I believe. I thought
23 you did.

24 MS. BARRY: Okay, thank you.

25 BY MS. BARRY:

Madiany - Direct (BAR)

150

1 Q Now do you know whether or not the George Levin loan was
2 approved?

3 A At that point I didn't know.

4 Q Okay. As of June 30th at the meeting you didn't know.

5 A No, I didn't know.

6 Q Were you expecting additional information related to the
7 George Levin loan?

8 A Yes.

9 Q And what information were you waiting for?

10 A I was waiting for additional support, supporting financial
11 statements from the other companies that Mr. Levin owned so
12 that we can see the financial strength that they provide in
13 order for us to assess the strength of the guaranty.

14 Q And at some point did you learn that the Levin loan for \$5
15 million was approved without you receiving that information you
16 were waiting for?

17 A Yes.

18 Q And in your experience underwriting loans, was that
19 unusual?

20 A Yes, it was unusual because we had to receive the
21 documents which were requested for us to be able to move
22 forward with the loan.

23 Q And again, was the Levin loan the largest unsecured
24 personal loan that you had seen at the bank?

25 MR. ENGLE: Objection. Asked and answered.

Madiany - Direct (BAR)

151

1 THE COURT: Sustained.

2 BY MS. BARRY:

3 Q Now I'd like you to take a look at what's been marked as
4 Government's Exhibit 118. And to make it easier for the
5 witness, Your Honor, I'd like to provide him with a hard copy.
6 May I approach?

7 THE COURT: Yes, ma'am.

8 BY MS. BARRY:

9 Q And what is Government's Exhibit 118?

10 A That is an e-mail.

11 Q And who is the e-mail from?

12 A It says from Joseph, that's from me.

13 Q And who are you sending it to?

14 A To Thomas J. Patterson.

15 Q And what is the subject? In the subject line, what does
16 it say?

17 A 2009 Levin, George G. RAS, 6-30 2009, approval.

18 Q So did you attach the RAS to an e-mail to Mr. Patterson?

19 A I don't remember.

20 Q Looking at Government's Exhibit 118, the first sheet is
21 the e-mail? Is that right? And then if you look at the
22 attachment, is that a RAS?

23 A Yes.

24 Q Okay.

25 MS. BARRY: Your Honor, the Government moves for the

Madiany - Direct (BAR)

152

1 admission of Government's Exhibit 118.

2 MR. EGAN: No objection.

3 MR. ENGLE: No objection.

4 THE COURT: Admitted.

5 MS. BARRY: May it be published, Your Honor?

6 THE COURT: Yes.

7 BY MS. BARRY:

8 Q So if we could go ahead and take a look at that e-mail,
9 which is the first page of Government Exhibit 118, if we could
10 highlight that please. And again, you're saying this is an e-
11 mail from you, Joseph O. Madiany?

12 A Yes.

13 Q And what's the date that you sent this e-mail?

14 A October 6, 2009.

15 Q And you're sending it to Tom Patterson; is that right?

16 A I did so many e-mails I can not specifically recall but it
17 seems like I'm sending it to Tom Patterson.

18 Q Okay. Is that what it says, to, right? To Thomas J.
19 Patterson?

20 A Yes.

21 Q Okay. And what do you say in your e-mail. If you can
22 just read that sentence that you write to Mr. Patterson.

23 A "Tom, per your request, RAS, thanks."

24 Q And so now if we could take a look at the second page of
25 Government's Exhibit 118. And looking at the second page of

Madiany - Direct (BAR)

153

1 118, this is a Risk Assessment Summary, and what is the date?

2 A The date is still 6-30 2009.

3 Q Okay. And if we go further down, is this -- who is this a
4 RAS, for what, for who is this loan made to?

5 A George G. Levin.

6 Q And what is the amount of the loan?

7 A The amount of the loan is \$5 million.

8 Q So does it appear to be the RAS from, that you prepared on
9 June 30, 2009?

10 A Yeah, it is the one that I prepared and I already
11 forwarded to the relationship manager.

12 Q Is it the same, or is it different?

13 A It is different.

14 Q And how is it different?

15 A First of all, the purpose of this loan had been changed
16 from investment purposes to bridge loan for improvements to
17 property.

18 Q Okay. And right now, if we could Agent Boyer, if it's
19 possible, if we could do a side by side of page one of
20 Government's Exhibit 43 and page two of Government's Exhibit
21 118. And if you do the comparison, does it appear that
22 everything is the same except the purpose of the loan?

23 A The purpose is different and also another thing, the
24 guarantor, the guaranty.

25 Q Did you make those changes?

Madiany - Direct (BAR)

154

1 A I don't recall.

2 Q Well did you prepare the first one or did you prepare the
3 second one?

4 MR. EGAN: Objection.

5 THE COURT: Just a moment, please. What was the
6 answer to the first question? He did not recall? What was the
7 first question?

8 MS. BARRY: The first question is, did you prepare --
9 I think I said the RAS. I'm not sure I specified which one.

10 THE COURT: Counsel?

11 MR. EGAN: I think it was, did you prepare the second
12 one, Your Honor, and he said, I don't know.

13 THE COURT: All right. And then the next question
14 was?

15 MR. BARRY: Did you prepare this first RAS or the
16 second one?

17 THE WITNESS: The first one.

18 THE COURT: All right. Overruled.

19 BY MS. BARRY:

20 Q Do you know who made changes to Government's Exhibit 43?
21 The first RAS.

22 A No, no idea.

23 Q And if we could take a look at the second page of
24 Government's Exhibit 43 and the third page of Government's
25 Exhibit 118. If we could compare those. So looking now at

Madiany - Direct (BAR)

155

1 what's been written in the section, transaction comments,
2 originally transaction comments in Exhibit 43, which is what
3 you wrote, can you read that again, what you had originally?
4 On the left side. I don't know if you can read it. It's
5 Government's Exhibit 43.

6 A The transaction comment on the first RAS, George G. Levin,
7 borrower, is requesting \$5 million non-revolving commercial
8 line of credit from Nova Bank. The loan will be used by Mr.
9 Levin for investment purposes.

10 Q And I'd like you now to look at Government's Exhibit 118
11 and look at the third page, which the transaction comments.
12 And if you could read now the first two or three sentences.

13 A "Mr. George G. Levin, borrower, is requesting \$5 million
14 non-revolving commercial line of credit from Nova Bank. The
15 loan will be used by Mr. Levin for a short term bridge loan.
16 The borrower will use these funds to replace funds that were
17 used to purchase and improve real estate in Devon, Montgomery
18 County."

19 Q Now that transaction comment, do you ever recall that
20 while you were underwriting the George Levin loan?

21 A No.

22 Q I'd like to turn your attention now to another loan. If
23 we could take a look at Government's Exhibit 109 for the
24 witness please. And do you recall a loan for an individual
25 named Anthony Bonomo?

Madiany - Direct (BAR)

156

1 A Yes.

2 Q And did you underwrite that loan as well?

3 A Yes.

4 Q And taking a look at Government's Exhibit 109, is this a
5 Risk Assessment Summary that you prepared for a loan to Anthony
6 Bonomo?

7 A Yes.

8 MS. BARRY: Your Honor, the Government moves for the
9 admission of Government's Exhibit 109.

10 MR. EGAN: No objection.

11 MR. ENGLE: No objection.

12 THE COURT: Admitted.

13 MS. BARRY: May it be published, Your Honor.

14 THE COURT: Yes.

15 BY MS. BARRY:

16 Q And looking at Government's Exhibit 109, what's the date?

17 A The date of this loan, the date of the RAS is October 21,
18 2009.

19 Q And looking now at the second portion, who is the
20 borrower?

21 A Anthony Bonomo and Maryellen Bonomo.

22 Q And what is the purpose of the loan?

23 A Financial investment.

24 Q And what is the proposed amount of the loan?

25 A 4.5 million.

Madiany - Direct (BAR)

157

1 Q If we can turn to the second page please. And looking at
2 the transaction comments, if you would could you please read
3 the first three sentences.

4 A "Mr. Anthony Bonomo, borrower, is requesting \$4.5 million
5 commercial balloon loan from Nova Bank. As indicated above,
6 the loan will be used by Mr. Bonomo for financial investment
7 purposes. Borrower indicated plans to invest in funds in the
8 Banyon Group through Ballamor Capital Management."

9 Q Is there any -- well let me ask you this. Did you know
10 who owned Ballamor Capital Management?

11 A Yes.

12 Q Who owns that?

13 A Mr. Barry Bekkedam.

14 Q And at the time that you underwrote this loan did you know
15 that any of the loan proceeds were going to be invested in Nova
16 Bank stocks?

17 A No.

18 Q And is that anywhere in the Risk Assessment Summary? Was
19 that anywhere in the Risk Assessment Summary, that there would
20 be an investment in Nova stocks?

21 A No.

22 Q Now I'd like to turn your attention -- I'd like you to
23 take a look at what's been marked as Government's Exhibit 117.
24 And just for the witness please. And the second page of 117.
25 And looking at Government's Exhibit 117, what is 117?

Madiany - Direct (BAR)

158

1 A That again is loan committee minutes for October 27, 2009.

2 Q And looking at 117 --

3 MS. BARRY: Well Your Honor, the Government moves for
4 the admission of 117.

5 MR. ENGLE: No objection.

6 MR. EGAN: No objection.

7 THE COURT: Admitted.

8 BY MS. BARRY:

9 Q And looking at Government's Exhibit 117, is there any
10 mention of the Bonomo loan?

11 A No, ma'am.

12 Q And I'd like you now to take a look at Government's
13 Exhibit 117A. And Your Honor, this unfortunately is not on the
14 computer. May I approach, the witness?

15 THE COURT: Surely.

16 BY MS. BARRY:

17 Q And what is Government's Exhibit 117A?

18 A It is the minutes of the loan committee for October 20,
19 2009.

20 Q And in looking at Government's Exhibit 117A --

21 MS. BARRY: And Your Honor, the Government would move
22 for the admission of 117A.

23 MR. ENGLE: No objection.

24 MR. EGAN: No objection.

25 THE COURT: Admitted.

Madiany - Direct (BAR)

159

1 BY MS. BARRY:

2 Q Is there any mention of the \$4.5 million Bonomo loan on
3 October 20th of 2009?

4 A No.

5 Q Now I'd like to turn your attention please to another loan
6 for an individual named Charles Gallab. And if you could
7 please take a look at what's been marked as Government's
8 Exhibit 143, just for the witness please. Now what is
9 Government's Exhibit 143?

10 A That is again a Nova Bank Risk Assessment Summary
11 document.

12 Q And is it one that you prepared as the underwriter?

13 A Yes.

14 MS. BARRY: And Your Honor, the Government moves for
15 the admission of Exhibit 143.

16 MR. EGAN: No objection.

17 MR. ENGLE: No objection.

18 THE COURT: Admitted.

19 BY MS. BARRY:

20 Q Taking a look at Government's Exhibit 143, who's the
21 contact name for this loan?

22 A The contact name is Thomas Patterson.

23 Q I'm sorry, I'm looking at contact name. Does that say
24 Charles Gallab?

25 A Oh, sorry. Yeah, the contact name is Charles Gallab.

Madiany - Direct (BAR)

160

1 Q Okay. And what is the date of this loan?

2 A December 15, 2009.

3 Q And who is the borrower?

4 A Ballamor Creek, LLC.

5 Q And what is the loan amount?

6 A Five hundred thousand.

7 Q And what is the purpose of the loan. And if we could
8 highlight that, the purpose of the loan, please.

9 A This was for working capital.

10 Q And if we could please turn to the second page of the Risk
11 Assessment Summary. And looking at the transaction comments,
12 would you just read that first sentence.

13 A "Ballamor Creek, LLC, borrower, requests \$500,000
14 commercial line of credit for working capital purposes."

15 Q Okay, working capital purposes. Is there any mention that
16 any of the loan proceeds will be used to purchase Nova Bank
17 stock?

18 A No.

19 MS. BARRY: May I have a moment, Your Honor?

20 THE COURT: Yes.

21 BY MS. BARRY:

22 Q If we could just go back briefly to Government's Exhibit
23 118. And if we could publish that please, I believe it was
24 previously published. And if we could go to the second page of
25 that please. And if we look at that top portion, Mr. Madiany,

Madiany - Cross (EGA)

161

1 where it says date of RAS revision date, what is the date
2 there?

3 A There is no revision date?

4 Q So the date that's -- what is the date that is still on
5 the RAS?

6 A June 30, 2009.

7 MS. BARRY: No further questions, Your Honor.

8 MR. EGAN: May I, Your Honor?

9 THE COURT: You may proceed.

10 CROSS-EXAMINATION

11 BY MR. EGAN:

12 Q Good afternoon, Mr. Madiany.

13 A Good afternoon, sir.

14 Q At the time you were hired by Nova you had some
15 significant banking experience, correct?

16 A Yes, sir.

17 Q You had been at PNC, right?

18 A Yes.

19 Q And I believe you said, what was the other one? Wachovia?

20 A Wachovia, yes. It used to be First Union.

21 Q Right, and First Pennsylvania before that. And going to
22 Nova was a new experience for you, correct?

23 A Yeah, it was a new experience, yes.

24 Q And it was a bit of a step up, right? You had more
25 responsibility.

Madiany - Cross (EGA)

162

1 A Yes.

2 Q So it was a better job basically than the other two
3 places.

4 A Yes.

5 Q And part of that more responsibility was you were now
6 going to be running a small group of underwriters for a small
7 community bank as opposed to just being another one of the
8 underwriters at one of these huge banks, right?

9 A Yes.

10 Q And when you applied for that job you interviewed with Mr.
11 Hartline, correct?

12 A Can you repeat that?

13 Q When you applied for the job you interviewed with Brian,
14 Mr. Hartline, right?

15 A Yes.

16 Q And you got the job. When you got the job, you made a
17 number of changes to the way things were run in that
18 department, correct?

19 A Correct.

20 Q And in fact, you made a number of improvements to the way
21 things were run, correct?

22 A Correct.

23 Q And you were supported by management in all of those
24 improvements, correct?

25 A Yes.

Madiany - Cross (EGA)

163

1 Q And one of those improvements was actually this RAS
2 document we've been talking about, right?

3 A Yes.

4 Q And in fact, the RAS -- and if we could put up Government
5 43 just so we can talk about it a little -- the RAS is actually
6 something you kind of came up with, right?

7 A Yes.

8 Q So prior to you creating this Risk Assessment Summary, the
9 way that Nova actually kept track of this information was a lot
10 less organized.

11 A Yes.

12 Q And this was your way of sort of putting all of the
13 important info in one place, right?

14 A Yes.

15 Q And this was something that you suggested to management,
16 correct?

17 A Yes.

18 Q You suggested it to Mr. Hartline, correct?

19 A Yes.

20 Q And they agreed it was a good idea.

21 A Yes.

22 Q So this is not like a Government form they send to the
23 bank and say you have to fill this out, right?

24 A It's not.

25 Q It's an internal form.

Madiany - Cross (EGA)

164

1 A Yes.

2 Q And every bank does this slightly differently.

3 A Yes.

4 Q Okay. Now you were the head underwriter basically, right?

5 A Yes.

6 Q But you weren't in charge of the decision whether or not
7 credit should be given, correct?

8 A I was not in charge of that.

9 Q Because you had people above you that made those
10 decisions.

11 A Yes.

12 Q And I forget the name of the person who was there when you
13 were hired, but that person was ultimately replaced by a guy
14 named Mark Poliski, correct?

15 A Yeah, he was -- Joseph Lachte was replaced by Kevin Powell
16 then Mark Poliski.

17 Q Okay, so you had Joseph Lachte, then another person and
18 then ultimately Mark Poliski became the senior --

19 A Chief Credit Officer.

20 Q -- Chief Credit Officer. So he was essentially the person
21 who would decide whether or not a loan should be going to loan
22 committee, correct?

23 A Yes.

24 Q So you would present your information to Mr. Poliski and
25 he would review it, and if he wasn't satisfied, he would ask

Madiany - Cross (EGA)

165

1 you, he would say to you, this isn't good enough to go, right?

2 A Yes.

3 Q And he would maybe sometimes agree or maybe he'd ask for
4 more information, but it was different, based on that
5 particular loan, right?

6 A A few but not so many.

7 Q Yes. And just because a loan made it to loan committee
8 didn't mean it was approved, right?

9 A No.

10 Q So we're talking about June of 2009 here. Would it be
11 fair to say that you don't remember everything that happened
12 back then?

13 A It's been a while but I remember some.

14 Q Sure. And the things you remember, a lot of them are
15 being helped by looking at these documents to refresh your
16 recollection, right?

17 A Yes.

18 Q And so you've looked at Government's 43 a number of times,
19 correct? I mean over the past couple years, you've been shown
20 it by the Government a number of times, haven't you?

21 A Yes.

22 Q And that reminded you that you were the underwriter on
23 this particular loan, correct?

24 A Yes.

25 Q But absent reviewing this and talking about it with the

Madiany - Cross (EGA)

166

1 Government, do you have any independent recollection of this
2 stuff, what was going on around this loan?

3 A First of all, the loan size, because you know makes you
4 think because it was a very large size. The other thing which
5 came close to my mind was the urgency that was involved.

6 Q Right, that they wanted it to be done quickly.

7 A They wanted delivery of it by 6/30.

8 Q So let's talk about that. This loan, you were asked to do
9 this in a couple of days, right?

10 A Yes.

11 Q Now this isn't the only loan you were ever asked to do in
12 a quick period of time, right?

13 A No.

14 Q In fact, Nova kind of prided itself on being able to
15 deliver credit fast, right?

16 A I would say so.

17 Q And indeed, they even had a procedure for loans that were
18 going to be approved in between loan committee meetings where,
19 rather than have a full meeting, the loan papers would actually
20 just be presented individually to each of the loan committee
21 members, correct?

22 A Yes.

23 Q And they call that walking the loan around, right?

24 A Yes.

25 Q And that's something that happened on several occasions,

Madiany - Cross (EGA)

167

1 correct?

2 A Yes.

3 Q And in spite of the fact that the loan was being walked
4 around, it was still reviewed by each of those loan committee
5 members before they would sign off, right?

6 A Yes.

7 Q And in order for that to even happen Mr. Poliski would
8 have to agree that it should be sent around to them, correct?

9 A Yes.

10 Q So on this particular loan you were asked questions about
11 a loan committee meeting and I believe that was Government's
12 41. Do you see that?

13 A Yes.

14 Q And do you remember being asked about that and that the
15 loan itself doesn't show up on page 2 where the long list of
16 loans is, right?

17 A Yes.

18 Q Now that meeting, at the very bottom, if we could blow up
19 the bottom part of that. It says, the meeting was adjourned at
20 10:15 a.m., correct?

21 A Yes.

22 Q Now that would be pretty early on June 30th, right?

23 A Yes.

24 Q So if a loan wasn't approved until after 10:15 in the
25 morning, it would show up at the next meeting, correct? In

Madiany - Cross (EGA)

168

1 other words, on that long list that you approve every time you
2 show up.

3 A On the list, yes.

4 Q Would that be right? It would show up next week?

5 A It would show up on that monthly report.

6 Q Okay. So if we could have D-47 please. All right Mr.
7 Madiany, this is also a loan committee minutes, but if we cold
8 blow up the top, can you state the date of that one?

9 A This one's July 7, 2009.

10 Q Okay. And paragraph 2, that's where you guys reviewed and
11 approved the report for June, correct?

12 A Yes.

13 Q Okay. And if we could go to page 2. And if we could blow
14 up real big the bottom three loans and the top section and turn
15 it on its side.

16 MR. EGAN: Can I just approach, Your Honor? It would
17 be faster.

18 THE COURT: Sure.

19 MR. EGAN: Thanks.

20 BY MR. EGAN:

21 Q If you can see this, sir, do you see right there?

22 A Yes.

23 Q And who's the name on there?

24 A Levin, George.

25 Q And how much is the money?

Madiany - Cross (EGA)

169

1 A \$5 million.

2 Q Now you were asked a lot of questions about the purpose of
3 the loan, right?

4 A Yes.

5 Q And you were asked that the purpose of the loan is pretty
6 important to you as the underwriter, correct?

7 A Yes.

8 Q But there are circumstances where the purpose of the loan
9 is a lot more important than others, aren't there?

10 A Indeed, yes.

11 Q And that would be when the payments on the loan were
12 coming from whatever it was being used for, correct?

13 A Can you rephrase that?

14 Q Yeah, I probably should. So if I was borrowing money to
15 start a restaurant and I was going to pay you back with the
16 proceeds of the restaurant, that would be pretty important to
17 know, right?

18 A Yes.

19 Q Because you want to know if I know how to cook, right?

20 A Yes.

21 MS. BARRY: Objection.

22 THE COURT: Sustained.

23 BY MR. EGAN:

24 Q But if I have say \$400 million and I'm going to pay you
25 out of my funds, is the purpose of the loan as important under

Madiany - Cross (EGA)

170

1 those circumstances? It's not, is it? In other words, the
2 funds are not coming from the purpose of the loan; the funds
3 are coming from my cash flow. That makes the purpose of the
4 loan much less important, does it not?

5 A In some cases, yes.

6 Q And what you're really looking at as an underwriter is
7 where is the money coming from to pay for this loan, correct?

8 A Yes.

9 Q That's the key thing.

10 A Now you were asked about unsecured loans, and this indeed
11 was an unsecured loan, correct?

12 A Yes.

13 Q Unsecured loans are not unusual for Nova Bank, correct?

14 A Not unusual.

15 Q And they would be unsecured if there were other, if the
16 personal guarantees and the cash flow were sufficient to pay
17 the loan, correct?

18 A Right.

19 Q Now you presented your RAS to Mr. Poliski in this case,
20 correct, when you finished it?

21 A Yes, but with some conditions.

22 Q Right. And you never heard back from him about what
23 happened with those conditions, did you.

24 A No.

25 Q But it would be his decision whether or not to push the

Madiany - Cross (EGA)

171

1 loan forward without meeting those conditions, not yours,
2 right?

3 A The Chief Credit Officer and myself were mostly on the
4 same page, but you're right, ultimately he can push it.

5 Q Now when you were asked to do your investigation, your
6 underwriting for this particular loan, did Brian Hartline ever
7 come to you and ask you to ignore any facts?

8 A No.

9 Q Did he ever ask you to put something in there that wasn't
10 right?

11 A No.

12 Q Did he ever ask you to do anything about this loan?

13 A No.

14 Q In fact, it was Tom Patterson that came to you and talked
15 to you about this loan, right?

16 A Yes.

17 Q Now I want to talk a little bit about G-118. And I
18 believe that's been admitted so we can publish it. This, Mr.
19 Madiany, is an e-mail from you to Mr. Patterson, correct?

20 A Yes.

21 Q And it has an attachment on it, correct? See attachments?

22 A Yes.

23 Q And it says 2009 Levin, George G. RAS 063009.docx,
24 correct?

25 A Yes.

Madiany - Cross (EGA)

172

1 Q Okay. And if you turn to the next page, this is indeed a
2 June 30, 2009 RAS for Mr. Levin, correct?

3 A Yes.

4 Q And it's the attachment that you sent to Mr. Patterson,
5 correct?

6 A This one I can not specifically remember; I'm not very
7 sure.

8 Q Well it's attached to the e-mail. So if it's attached to
9 the e-mail, we can assume it's the attachment you sent him,
10 right?

11 A I don't want to assume, but it looks like that, yeah.

12 Q Yes. And I believe you testified on direct that you don't
13 know who put any other information into this document that made
14 it different from the original one, correct?

15 A Yes.

16 Q And you don't know why they would have done that, correct?

17 A No.

18 Q But indeed, an individual who was working on a loan
19 application could go into a Risk Assessment Summary and change
20 the information, correct?

21 A Into an open document, yes.

22 Q And you could -- say you had to update it, right?

23 A Yes.

24 Q So if there were discussions about using Mr. Levin's
25 property for security for the loan or for further loans, that

Madiany - Cross (EGA)

173

1 would be something that could be put into this document,
2 correct?

3 MS. BARRY: Objection.

4 THE COURT: Sustained.

5 BY MR. EGAN:

6 Q If we could have D-48 please. Mr. Madiany, I'm showing
7 you an e-mail chain that involves you, Mr. Poliski and Mr.
8 Patterson. And if you could take a moment to -- do you
9 recognize that document? The bottom appears to be an e-mail
10 from you to Mr. Poliski and Mr. Patterson, correct?

11 A Yes.

12 Q And it is dated Thursday, July 16th, correct?

13 A July 16, 2009.

14 Q Right. And it says, "Mark and Tom, attached is the
15 updated RAS for the subject borrower based on our prior
16 discussions." Correct?

17 A That's what it says, yes.

18 Q Now you don't really remember at all what this was about,
19 do you?

20 A Like I said initially, it has been quite a while and I was
21 getting so many e-mails at that time too.

22 Q Sure, of course. But basically it's some communication
23 from you to Mr. Poliski and Mr. Patterson in July of 2009
24 updating the RAS, for lack of a better way of putting it,
25 right?

Madiany - Cross (EGA)

174

1 A It says something about business financial statements.

2 Q Yes.

3 A Yes.

4 Q So in other words, even in July there was information
5 going back and forth between you and Mr. Poliski about this
6 RAS, correct?

7 A Like I say, it's been a while, because this is the first
8 time I'm looking at this document, this specifically.

9 Q Sure. Didn't see that before with the Government?

10 A That's why I'm taking my time.

11 Q Take your time, sir, I'm sorry.

12 A Yeah, it looks like there are some communications.

13 Q And it's between you and Mr. Poliski and Mr. Patterson and
14 it's about Mr. Levin's loan, correct? Or about his RAS, excuse
15 me.

16 A Correct.

17 Q And they're making some modifications in July, correct?

18 A Yes.

19 Q And you probably don't really remember at all what that
20 was about, right?

21 A I see there's modifications but I don't know which part of
22 the RAS would have been modified. The place which could have
23 been involved in modifying the RAS probably would have been the
24 financial statements and doing the analysis.

25 Q Okay. So this would be some of maybe that more

Madiany - Cross (EGA)

175

1 information you were talking about earlier.

2 A I can not say for sure which one.

3 Q Of course.

4 A Because like I said, this document was an open document
5 whereby even other people had access.

6 Q Right, and could be amended for all sorts of appropriate
7 reasons, correct?

8 A Yes.

9 Q Now you were asked a number of questions about a loan to
10 Mr. Bonomo. Do you recall that?

11 A Yes.

12 Q And do you remember much about that loan at all?

13 A That loan, essentially because it was secured by Ballamor
14 Capital account, it was pretty much straightforward.

15 Q Well you know who Mr. Bonomo was, didn't you?

16 A I've heard of his name.

17 Q And you knew that his company had a relationship with Nova
18 Bank and that he had a number of accounts there? Or you don't
19 remember that?

20 A I don't specifically recall.

21 Q That's okay. I don't think we need to go into that. You
22 were shown a document, and this is one we just received today,
23 and apologies Your Honor. 117A, do you still have that? It
24 was handed to you in paper form.

25 A Yes I do.

Madiany - Cross (EGA)

176

1 Q And you were asked -- this is the loan committee meeting
2 of October 27th, which was around the time that the Bonomo loan
3 was approved, correct?

4 A Yes.

5 Q Now first of all, the minutes show who is there and who
6 isn't, right?

7 A Yes it does.

8 Q And Mr. Hartline was actually absent at this meeting,
9 correct?

10 A His name is there.

11 Q And doesn't it say absent right after it? Or am I missing
12 that?

13 A No.

14 Q Can I see yours?

15 A 117A, right?

16 MR. EGAN: Your Honor, may I have a moment? I need
17 to speak to the Government.

18 BY MR. EGAN:

19 Q If we could have 117 put on the screen. And if we could
20 have page 1 of 117. There is no page 1 of 117. All right,
21 this is Government Exhibit 117, and if you see, if we could
22 blow up the very top, it's loans approved in October, correct?

23 A October 1st to 31st, 2009.

24 Q Okay. And then if you could get rid of that and if we go
25 down to line 6, who's there on line 6?

Madiany - Cross (ENG)

177

1 A Anthony and Maryellen Bonomo.

2 Q So that would have been on the list of loans that were
3 sent to be approved based upon October 1st to 31st, correct?

4 A Yes.

5 Q And you were asked about some loans with regard to Mr.
6 Gallab?

7 A Yes.

8 Q And nothing unusual about those loans in your view?

9 A There's nothing unusual about that.

10 Q And you're aware that his company also had a large
11 relationship with Nova Bank?

12 A Yeah, he had the companies which he holds with the loans,
13 yes.

14 Q Yes. They had a relationship close to \$5 million with the
15 bank, correct?

16 A I'm not very sure about the amount.

17 Q Now at any time in any of this process did Brian Hartline
18 ever ask you to do anything improper?

19 A No.

20 MR. EGAN: That's all I have, Your Honor.

21 MR. ENGLE: May I, Your Honor?

22 THE COURT: Yes, sir.

23 CROSS EXAMINATION

24 BY MR. ENGLE:

25 Q Good afternoon, Mr. Madiany.

Madiany - Cross (ENG)

178

1 A Good afternoon, sir.

2 Q Mr. Madiany, you came to Nova Bank in April of 2006 and
3 you were there until approximately October of 2012; is that
4 right?

5 A Yes.

6 Q Okay. And that was after you had banking experience at
7 other banks such as PNC; is that correct?

8 A Yes.

9 Q But you would agree with me that different banks generate
10 their own criteria for how they decide whether they do or they
11 do not want to give loans to people under various
12 circumstances.

13 A Correct.

14 Q And different banks will agree more often to give
15 unsecured loans than certain other banks. Is that also
16 correct?

17 A Yeah, it is correct.

18 Q And amounts of loans can differ based upon which bank
19 you're talking about as well. Is that also correct?

20 A Yeah, based on my experience, yes.

21 Q And the risk assessment that a bank goes through in
22 determining whether or not to take the risk on loaning a
23 particular individual money, those assessments are different at
24 all different banks. Isn't that also correct?

25 A It is correct because underwriting is not a science. It

Madiany - Cross (ENG)

179

1 can be very subjective.

2 Q Right, not an exact science, it's more of an art form,
3 correct?

4 A Right.

5 Q Okay. Now you were aware when you arrived at Nova Bank in
6 April of 2006 that Mr. Barry Bekkedam had a relationship with
7 the bank as a member of the board. Is that correct?

8 A Yes.

9 Q All right. And you also were aware during your time at
10 the bank that Mr. Bekkedam then left the board in approximately
11 2007. Isn't that also correct, sir?

12 A Yes.

13 Q Okay. Now, during the time that Mr. Bekkedam was on the
14 board you didn't frequently see Mr. Bekkedam at Nova Bank's
15 offices, did you.

16 A No.

17 Q He wasn't coming there telling people, this is my bank and
18 I run the show. He wasn't doing that, was he.

19 A He was at different locations.

20 Q Okay.

21 A How about your location? Did he ever show up there and
22 say, hey, Nova Bank, my bank, I run the show?

23 A No.

24 Q No. And you didn't, during the time when Mr. Bekkedam was
25 on the board for the bank, receive many e-mail communications

Madiany - Cross (ENG)

180

1 from him, did you?

2 A No.

3 Q You didn't receive any e-mail communications from him, did
4 you.

5 A During my time over there, none.

6 Q None. And you wouldn't receive phone calls from him
7 saying, I want you to approve a particular loan, or recommend
8 that we're going to approve a particular loan. He didn't do
9 that either, did he.

10 A No.

11 Q No. And after Mr. Bekkedam left the board in 2007, you
12 didn't see him at the bank.

13 A To tell you the truth, I never met him.

14 Q You've never even met him.

15 A Yeah.

16 Q Okay. That's Mr. Bekkedam over there, Mr. Madiany, okay?
17 So in working at Nova Bank for about six years you never met
18 Mr. Bekkedam, let alone received e-mails or phone calls from
19 him, right?

20 A Right.

21 Q Okay. And you would agree with me that, as you said, the
22 George Levin loan was unsecured and that's not an unusual
23 thing, correct?

24 A For that amount it's a little bit unusual.

25 Q A little bit unusual for the amount but not that it was --

Madiany - Cross (ENG)

181

1 that an unsecured loan was approved was not unusual.

2 A That's not unusual.

3 Q All right, now the amount may have been different because
4 that was, you said, one of the higher amount loans that Nova
5 had ever approved. Is that right?

6 A Yes.

7 Q Okay. Now Mr. Levin, however, was an unusual individual
8 in that he was a person with a net wealth in 2009 of upwards of
9 \$400 million, wasn't he?

10 A I'm not sure about the amount but he was a wealthy
11 individual.

12 Q He was really wealthy, wasn't he? He had millions of
13 dollars in assets, isn't that right?

14 A Yes he had.

15 Q Okay. So he wasn't the typical customer either, was he.

16 A Very few of them.

17 Q Right. A small community bank like Nova didn't have uber
18 rich multimillionaires walking in every day applying for loans.

19 A Right.

20 Q So the circumstances of the size of the loan relative to
21 the man's wealth was not really all that strange or unusual,
22 was it, Mr. Madiany.

23 A I guess not.

24 Q Okay. Now the Levin loan itself, no one came to you and
25 said, we need to get this done fast because Mr. Levin is

Madiany - Cross (ENG)

182

1 associated with Mr. Bekkedam. No one ever said that to you.

2 Am I right about that?

3 A Not directly.

4 Q Well no one said that to you at all, did they?

5 A No one said that.

6 Q Right. And the fact is that it needed to be done quick
7 because you were getting the information a day or two before
8 the quarter was about to end. Is that right?

9 A Right.

10 Q And to get the money onto the balance sheets or onto the
11 books, it's got to get done before the quarter ends, correct?

12 A Correct.

13 Q All right. So, the loan committee had a meeting that
14 morning and it ended quite early, as you were asked by Mr.
15 Egan, and the loan was still being processed; is that correct?

16 A Right.

17 Q Okay. Can we bring up please Government Exhibit 43. And
18 Your Honor, this has been published before. May we publish it
19 again?

20 THE COURT: Yes, sir.

21 MR. ENGLE: Thank you.

22 BY MR. ENGLE:

23 Q Mr. Madiany, do you have Government 43 there in front of
24 you on the screen?

25 A Yes.

Madiany - Cross (ENG)

183

1 Q All right. This is the Risk Assessment Summary, or RAS,
2 that you had prepared for Mr. Levin's loan, correct?

3 A Yes.

4 Q And this is where we saw that he was getting an interest
5 rate of prime plus one percent with a seven percent floor? If
6 we go down one section, Sean. Do you see that, where it says
7 rate?

8 A Yes.

9 Q And that wasn't any kind of special rate.

10 A No it was not.

11 Q Okay. And even though we said that there's no collateral
12 securing the loan, there was a lot of guarantee there, isn't
13 that also correct.

14 A Yes.

15 Q All right. Now can we go to -- this is page 1 of 8. Can
16 we go to page 8 of 8 please. Do you see that there, Mr.
17 Madiany?

18 A Yes.

19 Q All right. This is a form that Nova Bank has that lists
20 the name of the borrower, right?

21 A Yes.

22 Q This is attached to the Risk Assessment Summary.

23 A Yes.

24 Q So after the Risk Assessment Summary is presented to the
25 individuals who get to vote on it from the loan committee, they

Madiany - Cross (ENG)

184

1 either sign off on it saying that they approve it or they
2 don't, correct?

3 A Yes.

4 Q And in this instance this loan for George Levin of \$5
5 million says that it was approved on the 30th day of June,
6 2009, and it's signed by a number of individuals. Is that
7 correct?

8 A Yes.

9 Q And it's signed by all the members of the loan committee.

10 A Yes.

11 Q They're the people that were the senior management of the
12 bank, right?

13 A Yes.

14 Q Mr. Bekkedam's name doesn't appear there on a signature
15 line, does it?

16 A It does not.

17 Q Because he had absolutely no authority whatsoever to grant
18 or deny the loan at the bank. Isn't that also right.

19 A He was not a member.

20 Q Right. So he couldn't say one way or another, could ne.

21 A No.

22 Q No. And we talked about the fact that it wasn't unusual
23 that a loan would be walked around to these different people if
24 there wasn't a meeting available to do it, correct?

25 A Correct.

Madiany - Cross (ENG)

185

1 Q That morning when you had the early loan committee meeting
2 there wasn't enough time to present the RAS to the entire
3 committee at that point, correct?

4 A Correct.

5 Q So the RAS was then taken to these five individuals for
6 their assessment, correct?

7 A Yes.

8 Q And based upon your work experience with those
9 individuals, they all took their fiduciary responsibilities to
10 the bank very seriously, did they not?

11 MS. BARRY: Objection.

12 THE COURT: Sustained.

13 BY MR. ENGLE:

14 Q Would you agree with me that in your experience with these
15 individuals, that when you presented them with information in a
16 RAS they would want to read it.

17 MS. BARRY: Objection.

18 THE COURT: Sustained.

19 BY MR. ENGLE:

20 Q Nevertheless, you're aware they signed off in it.

21 A Yes.

22 Q Okay. Now with respect to the Levin loan, if we go back
23 to the second page, and the top part, transaction comments,
24 Sean, thank you. Mr. Madiany, do you see that?

25 A Yes.

Madiany - Cross (ENG)

186

1 Q You were asked about this before by the Government where
2 it indicates in the body of that text that the loan was going
3 to be used by Mr. Levin for investment purposes; is that right?

4 A Yes.

5 Q And what that would mean is if that loan is approved and
6 funded, the money would go to Mr. Levin. Is that correct?

7 A If it's approved, yes.

8 Q Right. We know this loan was approved, right?

9 A The document, yeah.

10 Q Yeah. You saw the signatures. It was approved by the
11 loan committee?

12 A Yes.

13 Q Then it would be funded and the money would be sent to the
14 customer, correct?

15 A Correct.

16 Q \$5 million would be sent to Mr. Levin, and at that point
17 he said that the purpose was for investment, correct?

18 A Right.

19 Q Now he could invest in a business, right?

20 A Yes.

21 Q He could invest in real estate.

22 A Yes.

23 Q He could invest in anything he wanted to. It's his money
24 at that point, right?

25 A Yeah, it is his money.

Madiany - Cross (ENG)

187

1 Q Yeah. So when he gets the money, then Mr. Levin has to
2 make the independent decision for himself who or what he's
3 going to invest in. Right?

4 A You're right, yep.

5 Q And at a certain point in time, whether it was before the
6 loan was approved, or shortly after the loan was approved, you
7 were told by Mr. Patterson who brought this loan to you that
8 Mr. Levin intended to invest in Nova Holding Company stock,
9 right? You came to learn that.

10 A Can you repeat that question again?

11 Q You came to learn, either slightly before or somewhat
12 after the loan was approved on June 30, 2009, that the purpose
13 was for Mr. Levin to invest by purchasing Nova Holding Company
14 stock; isn't that right?

15 A I did not learn about the purpose for investment in Nova
16 Bank.

17 Q Ever?

18 A Never.

19 Q Never.

20 A Yeah.

21 Q Okay. You've met with the Government agents on a number
22 of occasions prior to this trial, haven't you?

23 A Yes.

24 Q Okay. Now do you recall meeting with Government agents
25 on or about October 1, 2015? So this past October, first day.

Madiany - Cross (ENG)

188

1 A Yes I did.

2 Q All right. And you were being asked about issues
3 involving the Levin loan documents. Do you recall that?

4 A Right.

5 Q And you indicated to the agents -- let me just make sure I
6 get this right -- that you believed that Patterson told you
7 that the funds were used by Levin to invest in the bank.
8 Remember that?

9 A I remember that, but that was an error.

10 Q That was an error.

11 A Yeah.

12 Q Okay. And then do you remember that during this interview
13 with the Government agents they questioned your recollection
14 about this issue because you had not previously mentioned that
15 during prior interviews or during your grand jury testimony.
16 Do you remember that?

17 A Yes.

18 Q And you stated that you may be making an assumption that
19 you were told about the funds being used to purchase the bank
20 stock because you later learned about Mr. Levin purchasing the
21 stock in the bank, right?

22 A No, it could have been a miss work (sic) because since
23 2009 and 2015, or whatever year was that, a lot has passed
24 through, and what I was telling to the agent at that point was
25 it could be because I was thinking about it because, but nobody

Madiany - Cross (ENG)

189

1 actually told me that it was for that purpose.

2 Q Well how would you have it in your mind to say to the
3 agents that you were aware that Mr. Levin used the money to
4 invest in Nova stock if no one ever said that to you?

5 A It was mostly because of the timing.

6 Q The timing.

7 A Of the approval itself. But nobody outright came out and
8 said, no.

9 Q How about, do you remember meeting with the agents on St.
10 Patrick's Day of this year, March 17th?

11 A Yes.

12 Q And you remember telling them that you were not absolutely
13 certain that you were told by Tom Patterson at the time the
14 Levin loan was funded that the loan was for Levin to purchase
15 Nova stock but you were certain that you learned about how the
16 funds were used sometime after the loan was funded on June 30,
17 2009. Do you remember telling agents that just a couple weeks
18 ago?

19 A That last portion is one which I don't want to admit to
20 because nobody -- probably what I was doing was just assuming,
21 but the only thing which triggered me to that is the 6-30
22 approval date, that's all.

23 Q Okay. Let me ask you something. Did you say to the
24 agents on March 17, 2016 that you weren't absolutely certain
25 that Mr. Patterson told you at the time the loan was approved

Madiany - Cross (ENG)

190

1 that it was for Mr. Levin to purchase stock, but that you were
2 certain you learned about how the funds were used sometime
3 after June 30th. Did you say that to the agent?

4 A I said that to the agent but I did not learn anything
5 about the usage of the loan.

6 Q Okay. So in October of 2015 you told the agents that you
7 knew about the loan's purpose, you said that same thing again
8 to them March 17th of this year, but now, today, when you're
9 testifying in court, that's just not the case.

10 A No, we discussed that issue, the agents, in 2015, in 2016,
11 sorry, but as far as saying with certainty that I learned, how
12 could I -- I had no way of learning because I was away from the
13 bank all that time so there was no certainty involved.

14 Q So it's your sworn testimony that Mr. Patterson never told
15 you, either before or after the Levin loan was being approved,
16 that it was for him to invest in Nova stock.

17 A Yes.

18 Q Okay. Even though you said all that to the agents.

19 A Yeah, because we had the discussion about that.

20 Q Okay. Now you never spoke to Mr. Bekkedam about the Levin
21 loan whatsoever; is that right?

22 A No.

23 Q He never came to you and said, I need you to give Mr.
24 Levin special treatment?

25 A No.

Madiany - Cross (ENG)

191

1 Q He never contacted you about the details

2 A No.

3 Q And the RAS document that you were talking about earlier,
4 you said it's an open document and other people would have
5 access to it?

6 A Yes.

7 Q An open document would require that you have access to the
8 bank system; is that right?

9 A Yes.

10 Q When this document, the Levin RAS, was created and that we
11 were talking about it during June and then later in October,
12 Mr. Bekkedam didn't have any association with the bank and
13 therefore would not have had any access to it; is that correct?

14 A That's correct.

15 Q Now if we can pull up Government Exhibit 41.

16 THE COURT: Counsel, about how much longer?

17 MR. ENGLE: I'm going to try to wrap this up in five
18 minutes if I can, Your Honor. Unless the Court would like me
19 to stop.

20 THE COURT: No, no, you can go right ahead.

21 MR. ENGLE: Okay, thank you.

22 BY MR. ENGLE:

23 Q Those are the loan committee minutes for June 30th of
24 2009?

25 A Correct.

Madiany - Cross (ENG)

192

1 Q It indicates various members of the loan committee that
2 were present, correct?

3 A Right.

4 Q And that there were various guests who were permitted to
5 be present at that meeting. Is that also correct?

6 A Correct.

7 Q Mr. Bekkedam's name isn't there, is it?

8 A No.

9 Q Okay. Now you were asked some questions about whether or
10 not the Levin loan showed up in connection with any of the loan
11 committee minutes. Do you remember that, when the Government
12 was asking you questions?

13 A Yes.

14 Q And then Mr. Egan showed you Government 117 where the
15 Levin loan did, in fact, show up, correct? We went over that?

16 A It showed up not on the minutes but on the report.

17 Q Right. And the Government had asked you whether or not
18 anything showed up on the report of the June 30th meeting.
19 Remember that?

20 A Yes.

21 Q And it wouldn't have show up and it couldn't have show up
22 on those meeting minutes because the meeting happened early in
23 the morning and the loan wasn't approved until later in the
24 day, right?

25 A It was walked around.

Madiany - Cross (ENG)

193

1 Q Right. So it wouldn't show up in that document.

2 A No.

3 Q But it did show up in the other meeting minutes that we
4 saw recently, correct? And can we call up Government 59? Do
5 you recognize that document, sir? Is that loan committee
6 minutes for July 14th of '09?

7 A Yes.

8 Q Okay. And again, that's a meeting where if you look at
9 the members and the guests that were present, Mr. Bekkedam
10 wasn't there, right?

11 A He wasn't.

12 Q And if we go to the next page, do you see that again we
13 have the ratification of the loans approved document?

14 A Yes.

15 Q All right. Your Honor, may I approach? It will be a
16 little bit faster if I do.

17 THE COURT: Yes, sir.

18 MR. ENGLE: Thank you.

19 BY MR. ENGLE:

20 Q In looking at that, do you see down here as you go down
21 I've highlighted one?

22 A Yes.

23 Q What name is there?

24 A George Levin.

25 Q What's the date of the loan?

Madiany - Cross (ENG)

194

1 A 6-30 2009.

2 Q What's the amount?

3 A Five million.

4 Q Okay. So when it was suggested during your direct
5 examination that that loan was just never reported anywhere,
6 that wouldn't be accurate now, would it?

7 MS. BARRY: Objection.

8 THE COURT: Overruled.

9 BY MR. ENGLE:

10 Q It's not accurate because it's reported in what I just
11 showed you; isn't that correct?

12 A Can you repeat the question again please?

13 Q It would not be accurate to state that the George Levin
14 loan was never reported on any loan committee documents because
15 I just showed you documents that report the loan.

16 A Right

17 Q Right. And similarly, do you remember being asked on
18 direct examination about the reporting of the Anthony Bonomo
19 loan?

20 A Yes.

21 Q And you were asked questions that were suggesting that the
22 Bonomo loan wasn't reported either, correct?

23 MS. BARRY: Objection, Your Honor.

24 MR. ENGLE: It's his recollection.

25 THE COURT: Well let's just stick with the one that

Madiany - Cross (ENG)

195

1 you just questioned about, not Mr. Bonomo's loan. You
2 demonstrated by the exhibit.

3 BY MR. ENGLE:

4 Q Right, okay. Do you remember being asked questions on
5 direct examination about Government Exhibit 117A?

6 A Yes.

7 Q Do you have that in front of you?

8 A Yep.

9 Q And you remember being asked questions, and that there was
10 testimony given that the Bonomo loan didn't show up there.

11 A Yeah, I remember being asked the questions.

12 Q Right. May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MR. ENGLE:

15 Q In looking at Government 117A, these are the loan
16 committee minutes for October 20th of '09, right? Am I right
17 about that?

18 A Yes.

19 Q Okay. Here's the ratification of loans for the period
20 October 1 through October 31st of '09. Do you see that?

21 A Yes.

22 Q Number six, that's Bonomo, correct?

23 A Yes.

24 Q That's the \$4.5 million loan.

25 A Yes.

Madiany - Cross (ENG)

196

1 Q So in fact it was reported there, correct?

2 A Correct.

3 Q To suggest otherwise would be in correct, am I right?

4 A You're right.

5 Q Okay. Now with respect to the Bonomo loan, Mr. Bekkedam
6 never contacted you in any way, shape or form to say, I want
7 you to approve that loan, did he?

8 A No.

9 Q He never suggested that Mr. Bonomo was a client, or a good
10 friend, or someone that he wanted to be given preferential
11 treatment at the bank.

12 A No.

13 Q He never contacted you in any way, shape or form about the
14 loan to Mr. Gallab, did he.

15 A No.

16 Q During all your time at the bank, Mr. Bekkedam was never
17 present at any of the loan committee meetings.

18 A He was not.

19 Q And he never contacted you to ever try to put pressure on
20 you as to what went in to a Risk Assessment Summary, correct?

21 A Correct.

22 Q And he never called you or communicated with you in any
23 way, shape or form to try to influence your recommendation for
24 anyone that might be getting a loan that he knew.

25 A No.

Madiany - Redirect (BAR)

197

1 Q He never did that.

2 A He never did that.

3 MR. ENGLE: Thank you, sir. I have nothing further.

4 THE COURT: In deference to the fact that we're going
5 to start a little later tomorrow, I will let counsel go forward
6 at this time.

7 MS. BARRY: I'll be brief, Your Honor. Thank you.

8 REDIRECT EXAMINATION

9 BY MS. BARRY:

10 Q Mr. Madiany, there were several questions about Mr. Levin,
11 and that he was a person that had a lot of wealth, that he was
12 a very wealthy person. Do you remember those questions?

13 A Yes I do.

14 Q And do you recall that when you reviewed Mr. Levin's tax
15 returns that he had a negative gross income?

16 A Yes.

17 Q And for a person who had ostensibly a ton of money, did it
18 concern you that his tax returns showed a negative gross
19 income?

20 A It didn't concern me so much because we see that a lot
21 with the wealthy individuals showing negative net worth and
22 negative income for the year.

23 Q And to follow up on whether or not you should be
24 concerned or not, did you want more information related to his
25 companies?

Madiany - Redirect (BAR)

198

1 A Yes.

2 Q And when you were looking and assessing Mr. Levin, you
3 needed two years worth of financials; is that right?

4 A Right.

5 Q And so if you were assessing him within a few days at the
6 end of June of 2009, would the previous two years be 2008 and
7 2007?

8 A Yes.

9 Q There were many, many questions that were asked of you
10 regarding the loan committee meetings and the minutes. I was
11 specifically asking you about the minutes of each meeting, and
12 just explain what are the purpose of meeting minutes?

13 A The meeting minutes purpose is to encapsulize the approval
14 of all loans which have been presented to the loan committee by
15 managers. In fact, if you look at the meetings, the principal
16 on the left side, the loan officer presenting the loans on the
17 right side. Those are the guests so to speak.

18 Q So in looking at Government's Exhibits, I believe it was
19 41, and in those meeting minutes, just the minutes themselves,
20 is there any discussion on the George Levin \$5 million
21 unsecured loan?

22 A No.

23 Q And I'm not sure if you have Defense Exhibit 47 in front
24 of you or not. Do you have that there?

25 MR. EGAN: We would stipulate there's no discussion

Madiany - Redirect (BAR)

199

1 in the minutes, Your Honor.

2 THE COURT: Agreed?

3 MS. BARRY: Okay, agreed.

4 THE COURT: Thank you.

5 BY MS. BARRY:

6 Q So there was no discussion in the meeting, the subsequent
7 meeting on the \$5 million unsecured George Levin loan.

8 A No.

9 Q So when they talk about walking the loan around, when does
10 a loan get walked around typically?

11 A Normally the senior management they had their offices in
12 another location, in Berwyn, Pennsylvania and that's where the
13 senior management had their offices, so sometimes they would
14 just talk among themselves and walk the loan documentation
15 around to the offices.

16 Q And it would make sense that those walk-arounds would
17 happen in between meetings.

18 A Yes.

19 Q So if there's a meeting on the day a loan is going to be
20 approved, then is it typical, in your experience, that the loan
21 would be discussed at the meeting?

22 A Yes.

23 Q And there was no discussion on June 30, 2009, correct?

24 A Not about that loan.

25 Q And again, in looking at the meeting minutes on

Madiany - Redirect (BAR)

200

1 Government's Exhibit 117 and 117A, just the meeting minutes
2 themselves, and 117 is from October 27th, right? So this is
3 the meeting on October 27, 2009.

4 A Yes.

5 Q Is there any discussion on the Anthony Bonomo \$4.5 million
6 loan?

7 A No.

8 Q And if we go back and you take a look at Government's
9 Exhibit 117A, which is the meeting minutes from October 20,
10 2009, is there any discussion about the Anthony Bonomo \$4.5
11 million loan in that meeting?

12 A No.

13 Q And looking at Government Exhibit, I believe it's 109, the
14 RAS for the Anthony Bonomo loan. Do you have that in front of
15 you? What is the date that that loan was approved?

16 A On page 1 it doesn't show the approval date. It just says
17 --

18 Q Oh, well as far as the date of the RAS, I'm sorry.

19 A It's October 21, 2009.

20 Q And so there's no discussion between the meetings on
21 October 20th and October 27th about that loan.

22 A Not to the loan committee.

23 Q And you were asked questions about whether or not an
24 unsecured loan was unusual. A \$5 million unsecured loan, was
25 that a usual occurrence at Nova Bank?

Madiany - Recross (EGA)

201

1 A No, that's unusual, unsecured.

2 MS. BARRY: May I have a moment, Your Honor?

3 THE COURT: Surely.

4 MS. BARRY: No further questions, Your Honor.

5 MR. EGAN: Very briefly, Your Honor?

6 THE COURT: Very.

7 RECROSS-EXAMINATION

8 BY MR. EGAN:

9 Q Loan committee minutes, they're like a summary of the
10 meeting, right?

11 A Yes.

12 Q They're not everything that happened there, correct?

13 A It's a summary of the loans presented on that day.

14 Q Yeah, the highlights.

15 A Yes.

16 Q And the other loans there on that sheet and then paragraph
17 2 says those were the ones that were approved.

18 A Yes.

19 Q That doesn't mean they weren't also discussed, correct?

20 A Normally what is in the minutes were discussed. The ones
21 we show in that report are the ones that we compiled by the
22 administrative assistants.

23 Q And that would include the ones that had been walked
24 around.

25 A Yes.

Madiany - Recross (ENG)

202

1 Q And you obviously couldn't take a loan to the loan
2 committee if all the paperwork wasn't done, right?

3 A No.

4 Q So if the paperwork wasn't done by the time of the meeting
5 you'd have to do it later that day by walking it around, right?

6 A Right.

7 MR. EGAN: That's all I have, Your Honor.

8 MR. ENGLE: Very briefly, Your Honor?

9 THE COURT: Oh, you can do it from your table if it's
10 going to be that brief.

11 MR. ENGLE: Sure.

12 RECROSS-EXAMINATION

13 BY MR. ENGLE:

14 Q Just taking a quick look at Government 117. And we can go
15 to the first page, second page, I'm sorry. You see paragraph
16 two, don't you, sir?

17 A Yes.

18 Q Part of the activity at the loan committee meeting was to
19 ratify the loan approved report, correct?

20 A Yes.

21 Q And that loan approved report is the report with all those
22 names that we showed you earlier, right?

23 A Yes.

24 Q And so for this particular example in October of 2009 when
25 the Bonomo loan was going through, the committee reviewed the

Madiany - Recross (ENG)

203

1 ratification of loan approval report, right?

2 A Right.

3 Q And that's the report I showed you earlier that says the
4 Bonomo loan, and it was \$4.5 million.

5 A Yes.

6 Q Okay. So that was business that was taken up at the loan
7 committee, correct?

8 A Yeah, that language covers the report.

9 Q Right. And on the issue of the unusual circumstances of
10 an unsecured \$5 million loan, the loan to Mr. Levin had
11 guarantees from those companies that were worth a lot of money
12 back on June 30th of 2009, right?

13 A Yes, that's what we were waiting to review.

14 Q Right. And there's nothing in your Risk Assessment
15 Summary that indicated that the loan committee should turn down
16 that loan because it was so unusual, correct?

17 A No.

18 Q Right. So you did not state because of anything being so
19 wildly unusual the loan committee should not approve it. You
20 never did that.

21 A No, that's not that language.

22 Q Okay. In fact, in the RAS, Government 43, if we could
23 bring that up briefly, the next page, the fifth page. When you
24 go down to part F, you go through an entire assessment of the
25 strengths and potential weaknesses for the loan, right?

Madiany - Recross (ENG)

204

1 A Right.

2 Q And below that -- if we can go down a little bit, Sean --
3 it says, mitigated reasons, it says both weaknesses mitigated
4 by credit strengths especially business experiences noted above
5 including the key man life insurance police on the principle,
6 right?

7 A Right.

8 Q That was your assessment of the strengths and weaknesses
9 and ultimately the strengths outweighed the weaknesses, didn't
10 they,

11 A Yes, but we were still waiting for the documentation from
12 the other companies.

13 Q I understand that. But the bottom line is that based upon
14 the information that you had at the time, your position was the
15 strengths outweighed the weaknesses, correct?

16 A Right.

17 Q And then the loan committee agreed with you and they
18 signed off on it, right?

19 MS. BARRY: Objection.

20 THE COURT: Sustained, counsel.

21 MR. ENGLE: Nothing further.

22 MR. BARRY: Nothing further, Your Honor. Thank you.

23 THE COURT: All right. At 4:50 we're going to
24 adjourn for the day. We will resume tomorrow morning at 10.
25 Be careful out there. It is important that you not discuss the

(Colloquy)

205

1 testimony. Please, please, please avoid any news reports about
2 this case. I did see a reporter in the courtroom; I don't mind
3 saying that. And you will be looking at the papers about the
4 game tomorrow but don't let your eyes stray. Thank you very
5 much. We'll see you tomorrow morning.

6 THE DEPUTY: All rise.

7 (The jurors exit the courtroom.)

8 THE COURT: You may step down, sir. Thank you. We
9 are adjourned. Thank you.

10 MS. BARRY: Your Honor, just one matter please. It's
11 not for the witness.

12 THE COURT: Yes, ma'am.

13 MS. BARRY: Your Honor, the Government would just
14 like to note that the predicate questions that are coming from
15 defense counsel on the Government's suggesting is what's
16 objectionable. The Government's not suggesting anything. The
17 Government is asking questions and the witness is answering.
18 To ask a question that the Government suggested what the answer
19 was is inappropriate and objectionable.

20 THE COURT: I agree.

21 MS. BARRY: And I would request that there's an
22 admonishment to defense counsel on continuing use of Government
23 suggested.

24 THE COURT: Counsel, Government's counsel is correct.
25 I did not hear an objection articulated on that basis, however,

(Colloquy)

206

1 but she is correct, and to that extent the objection from this
2 point forward would be sustained and I would ask that you not
3 do that. On the other hand, keep in mind that counsel may have
4 stated what the Government suggested and intended to suggest
5 what the Government would want you to infer from what we said
6 or what was testified to. There's a big distinction. But
7 nevertheless, the objection as it was stated is sustained.

8 MS. BARRY: Thank you, Your Honor.

9 THE COURT: All right.

10 MR. EGAN: And Your Honor, the other issue we have is
11 the continued difficulties with knowing the lineup.

12 THE COURT: Okay. Today?

13 MR. IGNALL: I had indicated who we're likely to have
14 for tomorrow as of last week. We have Mr. Poliski and Mr.
15 Deitrich will probably be the first two witnesses because Mr.
16 Poliski is the one we need to get in and out. Our next witness
17 would be Mr. Levin who we did not get to today. I doubt we'll
18 get past that. I anticipate the next witness we would try to
19 get here would be Mr. Patterson, and I'd be surprised if we got
20 through all that. I've already indicated that I anticipate
21 having Ms. Musser here on Wednesday. I really don't know who
22 else we would have. I don't know how far we're going to get,
23 but we can get an idea of who we'd likely come up with and let
24 them know. But it's very difficult for us to, you know, herd
25 the cats because some witnesses have travel issues and on

(Colloquy)

207

1 certain dates we can slide them in. Like Mr. Poliski --

2 THE COURT: But with Mr. Levin, is he a definite?

3 MR. IGNALL: Yes, he is here, he is in Philadelphia,
4 he will go on as our third witness tomorrow. And I'm hoping
5 we're done with him tomorrow but I'm not sure if we will or
6 will not be done with him.

7 MR. EGAN: What we're hearing, Your Honor, is maybe
8 through half of the day Wednesday. And with all due respect,
9 that's pretty short notice. I mean generally, I agree with Mr.
10 Engle, that with trials of this nature we get who's coming this
11 week.

12 THE COURT: Can you do that, counsel?

13 MR. IGNALL: Not easily, no, Your Honor. I'm not
14 aware of that being a standard practice and I even found an
15 example of the trial of Mr. Engle where he asked for the next
16 day and counsel gave it to him. We'll do the best we can. If
17 I give a name just because I think it's someone we might want
18 to get to, that's I think worse than useless because we get to
19 that person or we don't. Counsel knows who the potential
20 witnesses are. If I can give them some idea of who's going to
21 be here Wednesday, I'll let them know, but I don't know who's
22 going to be here Wednesday. I don't know who's going to be
23 here Thursday.

24 MR. ENGLE: Your Honor, my experience has been that
25 obviously the Government knows pretty much how they book travel

(Colloquy)

208

1 schedules. Either their legal assistants or the agents are
2 handling that stuff. Every trial that I've done that's been
3 week trials we've been given a week's worth of witnesses. Now
4 that didn't mean that the Government was held to a witness on
5 that week had to be called on Thursday as opposed to Friday or
6 Wednesday as opposed Thursday. That's not what we're talking
7 about.

8 THE COURT: I understand. Is there the ability,
9 counsel, to give them a general idea as to the remainder of
10 this week?

11 MR. IGNALL: I will do what I can, Your Honor, but it
12 may turn out to be less than useful if I have to shift around.

13 THE COURT: Well let's cross that bridge if it's not
14 useful, but at least give it to them and then see where we go
15 from there.

16 MR. IGNALL: Okay, because Ms. Musser is the only
17 travel we've set up for a witness for this week.

18 THE COURT: All right, so then there should be some
19 other people obviously between now and Friday who will testify,
20 and they're here.

21 MR. IGNALL: Yes, and we will work tonight now that
22 we know how far we've gotten today to see who we try to get
23 here for Wednesday or later.

24 THE COURT: All right. Just give it to the defense.

25 MR. IGNALL: Okay.

(Colloquy)

209

1
2
3
4
5
6
7
8

MR. ENGLE: Thank you, Your Honor.

THE COURT: Thank you every much. We're adjourned.

MR. IGNALL: Thank you.

(Proceedings concluded at 4:53 p.m.)

* * *

C E R T I F I C A T I O N

I, Anne Yowell, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Anne Yowell

Digitally signed by Anne Yowell
DN: cn=Anne Yowell, o, ou,
email=dianadoman@comcast.net,
c=US
Date: 2016.04.14 15:01:29 -04'00'

Date: April 14, 2016

ANNE YOWELL

DIANA DOMAN TRANSCRIBING, LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	14-CR-0548
)	
vs.)	
)	
BRIAN HARTLINE and)	
BARRY BEKKEDAM,	)	Philadelphia, PA
	)	April 5, 2016
Defendants.	)	10:26 a.m.

TRANSCRIPT OF EXCERPT OF TRIAL
BEFORE THE HONORABLE C. DARNELL JONES II and JURY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	DAVID J. IGNALL, ESQUIRE JENNIFER CHUN BARRY, ESQUIRE ASSISTANT UNITED STATES ATTORNEYS UNITED STATES ATTORNEY'S OFFICE 615 Chestnut Street, Suite 1250 Philadelphia, PA 19106
For the Defendant Brian Hartline:	PATRICK J. EGAN, ESQUIRE FOX ROTHSCHILD LLP 2000 Market Street, 10th Floor Philadelphia, PA 19107
For the Defendant Barry Bekkedam:	MICHAEL J. ENGLE, ESQUIRE GREENBLATT, PIERCE, ENGLE, FUNT & FLORES 123 South Broad Street, Suite 2500 Philadelphia, PA 19109
	RUSSELL D. DUNCAN, ESQUIRE SHULMAN, ROGERS, GANDAL, PORDY & ECKER, PA 12505 Park Potomac Avenue Potomac, MD 20854
	JOEL D. SCHWARTZ, ESQUIRE SHULMAN ROGERS GANDAL PORDY ECKER 12505 Park Potomac Avenue, 6th Floor Potomac, MD 20854
Audio Operator:	CARL HAUGER

Transcribed by: DIANA DOMAN TRANSCRIBING, LLC
P.O. Box 129
Gibbsboro, NJ 08026
Office: (856) 435-7172
Fax: (856) 435-7124
E-mail: dianadoman@comcast.net

Proceedings recorded by electronic sound recording; transcript
produced by transcription service

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-------------------	---------------	--------------	-----------------	----------------

FOR THE GOVERNMENT:

Mark Poliski	4 (Bar)	16 (Ega)	49 (Bar)
--------------	---------	----------	----------

41 (Dun)

David Dietrich	56 (Bar)	67 (Ega)	84 (Bar)
----------------	----------	----------	----------

78 (Dun)

George Levin	86 (Ign)	129 (Ega)
--------------	----------	-----------

160 (Dun)

<u>EXHIBITS:</u>	<u>I.D.</u>	<u>RECEIVED</u>
------------------	-------------	-----------------

G-4	9/30/2008 Risk Assessment Summary	Prev.	51
-----	-----------------------------------	-------	----

G-5	9/30/2008 Loan Committee Meeting Minutes	Prev.	49
-----	--	-------	----

G-55	Investment Application	Prev.	128
------	------------------------	-------	-----

G-67	Bank Document	Prev.	181
------	---------------	-------	-----

G-80	9/3/2009 E-mail	Prev.	117
------	-----------------	-------	-----

G-98	10/15/2009 E-mail	Prev.	120
------	-------------------	-------	-----

G-310	6/2009 Nova Bank Loan Paperwork	Prev.	106
-------	---------------------------------	-------	-----

Poliski - Direct (Bar)

4

1 (The following was heard in open court at 10:27 a.m.)

2 (Jury enters at 10:27:49 a.m.)

3 DEPUTY: All rise.

4 (Pause)

5 DEPUTY: Court is now in session. The Honorable C.
6 Darnell Jones II presiding.

7 THE COURT: Good morning, good morning, you may be
8 seated.

9 COUNSEL: Good morning, Your Honor.

10 THE COURT: Well, how about those Sooners -- I mean,
11 Wildcats? Next time.

12 COUNSEL: Next time.

13 THE COURT: Counsel, you ready to go?

14 MS. BARRY: Yes, Your Honor.

15 THE COURT: You may proceed.

16 MS. BARRY: Thank you, Your Honor. The United
17 States calls Mark Poliski.

18 M A R K P O L I S K I, GOVERNMENT WITNESS, SWORN.

19 THE CLERK: Please state and spell your name for the
20 record for me.

21 THE WITNESS: Mark Poliski, P-O-L-I-S-K-I.

22 MS. BARRY: May I inquire, Your Honor?

23 THE COURT: You may proceed.

24 MS. BARRY: Thank you. Good morning, Mr. Poliski.

25 THE WITNESS: Good morning.

Poliski - Direct (Bar)

5

1 DIRECT EXAMINATION

2 BY MS. BARRY:

3 Q Would you please tell the ladies and gentlemen of the
4 jury where you work.

5 A I currently work at Santander Bank.

6 Q And what is your position at Santander?

7 A I'm a credit officer.

8 Q And how long have you been in banking, sir?

9 A Been in banking since 1987.

10 Q And prior -- did you go to college?

11 A Yes, I did.

12 Q And did you get any particular kind of degree?

13 A Yes, I got a Bachelor of Science in Accounting.

14 Q Okay. Did you bec -- or, are you a CPA?

15 A I am not.

16 Q Okay. Mr. Poliski, were you ever employed by a bank
17 called Nova Bank?

18 A Yes, I was.

19 Q And how long did you work at Nova Bank?

20 A A little over three years.

21 Q And can you tell -- tell us, please, what time-frame that
22 covers, those three years?

23 A Yes, from the early part of 2008 until April of 2011.

24 Q And who hired you?

25 A Brian Hartline.

Poliski - Direct (Bar)

6

1 Q And do you see Brian Hartline here today?

2 A Yes, I do.

3 MS. BARRY: Your Honor, the Government would request
4 that the witness has identified the defendant, Brian Hartline.

5 THE COURT: Well, he says he sees him.

6 MS. BARRY: Okay.

7 BY MS. BARRY:

8 Q Would you please identify -- can you identify where he
9 is, please?

10 A Yes, that's Brian, seated right over there.

11 THE COURT: Record shall so reflect.

12 MS. BARRY: Thank you, Your Honor.

13 BY MS. BARRY:

14 Q And when you were hired at Nova Bank, what were you hired
15 to do?

16 A I was hired to be the Chief Credit Officer of the bank.

17 Q And can you explain what the Chief Credit Officer -- what
18 his duties would be?

19 A Chief Credit Officer is responsible for the credit
20 quality, credit approval, credit administration, loan
21 documentation of the -- of the loans in the bank.

22 Q And as the Chief Credit Officer, did you sit on any
23 committees at the bank?

24 A Yes, I sat on -- yes.

25 Q What committees?

Poliski - Direct (Bar)

7

1 A I sat on the loan committee, the asset liability
2 committee, the audit committee, and senior management team.

3 Q And what -- what happened at the loan committee?

4 A Loan committee's primary responsibility was to assess
5 loans that were being presented for approval, and approve or
6 deny their -- the loans.

7 Q Where -- there were times that loans that were not
8 discussed at the loan committee were walked around?

9 A Yeah -- walked around, as in not approved at loan
10 committee?

11 Q Or not presented, or not approved, loans that may not
12 have been approved at the committee, yes.

13 A There were times when loans were approved with signature
14 authority, yes, --

15 Q Okay.

16 A -- outside of loan committee.

17 Q Any loans that didn't go to loan committee, would they
18 subsequently be presented -- would they end up on a loan
19 ratification sheet that would subsequently go to the
20 committee?

21 A As I recall, there was a loan -- loans approved list that
22 was presented routinely at committee.

23 Q Okay. So, if a loan had been walked around, or didn't
24 get approved at committee, would those end up on the list if
25 they had been approved?

Poliski - Direct (Bar)

8

1 A They should have been, yes.

2 Q When you were at Nova Bank, who did you report to?

3 A I reported to Brian Hartline for a period of time, and
4 reported to John Golding for another part of my tenure there.

5 Q Okay. And I -- I may have asked you this, but what was
6 Brian Hartline's position at the bank?

7 A He was the President and CEO.

8 Q Did you know an individual named Barry Bekkedam?

9 A I knew of him, knew of the name, yes.

10 Q And how did you know the name Barry Bekkedam?

11 A I knew that he was previously affiliated with the bank, I
12 believe one of the founders of Nova Bank. I think he was on
13 the board, as I recall. Not while I was at the bank, but I
14 remember hearing that.

15 And he often referred clients to the bank.

16 Q Okay. And were you familiar with a company called
17 Ballamor Capital Management?

18 A Yes.

19 Q And what was Bar -- what was Ballamor Capital Management?

20 A That was a company that Barry owned, or was affiliated
21 with in some way, and also was a customer of the bank. The
22 bank had loans out to Ballamor Capital.

23 Q Okay. In addition to loans out to Ballamor Capital, do
24 you know whether or not the lo -- the bank made loans to
25 clients of Ballamor Capital?

Poliski - Direct (Bar)

9

1 A Yes, the bank did.

2 Q Do you know if Mr. Bekkedam personally had any loans with
3 Nova Bank?

4 A He did.

5 Q Do you recall any of the clients that had loans with Nova
6 Bank from Ballamor Capital?

7 A If you mention names, I would probab -- I would recall
8 them, yes.

9 Q Okay. Well, let's talk about an individual named George
10 Levin.

11 Do you recall whether or not George Levin had a loan
12 with Nova?

13 A Yes, he did.

14 MS. BARRY: Okay. And if we could, please 103442 --
15 and this has already been admitted, Your Honor, and -- if we
16 could just publish it? It's Government's Exhibit 43.

17 THE COURT: All right.

18 BY MS. BARRY:

19 Q I'm looking at Government's Exhibit 43. Is this -- does
20 this represent the risk assessment summary, or is this the
21 risk assessment summary for the George Levin loan?

22 And I have a hard copy, if that's easier for you,
23 sir.

24 A Yes, if you have a hard copy, that --

25 Q Yes.

Poliski - Direct (Bar)

10

1 A -- would be helpful, thank you.

2 MS. BARRY: May I approach the witness?

3 THE COURT: Yes, ma'am.

4 (Brief pause.)

5 THE WITNESS: Yes, this is the risk assessment
6 summary for that loan.

7 BY MS. BARRY:

8 Q Okay. And what was the amount of that loan?

9 A Five-million dollars.

10 Q At the time, was that the largest personal loan that you
11 saw at the bank?

12 A If it wasn't the largest, it was one of the largest.

13 Q Okay. And in terms of whether or not this loan was
14 secured, could you -- can you tell what --

15 A It was unsecured.

16 Q It was an unsecured loan?

17 A Yes.

18 Q Was this the largest unsecured loan that you had seen at
19 the bank?

20 A And if not, it was one of the largest. I don't recall if
21 it was, specifically, but it would have would -- would have
22 been one of the largest, if not the largest.

23 Q Okay. And looking at the purpose of the loan, what does
24 it indicate?

25 A Financial investment.

Poliski - Direct (Bar)

11

1 Q And were you ever told that the loan was going to be used
2 to purchase Nova Bank stock?

3 A No, I wasn't.

4 Q Do you recall whether or not there was any outstanding
5 information that you were waiting for with respect to this
6 loan before it was approved?

7 MR. EGAN: Objection to leading, Your Honor.

8 THE COURT: Sustained.

9 BY MS. BARRY:

10 Q Looking at the last page of this -- of Government's
11 Exhibit 43, and if we could turn to that, please. Looking at
12 this last page, does your signature appear on this page?

13 A Yes, it does.

14 Q Okay. And based on the number of signatures here, does
15 it indicate that the loan to Mr. Levin was approved?

16 A It does, yes.

17 Q Prior to the approval, was there any information you were
18 waiting on?

19 A Prior to approval?

20 Q Yes, do you recall?

21 A Well, we -- we request information from borrowers to
22 assess their creditworthiness.

23 So, sure, we waited for information and -- I'm not
24 sure if you're asking were we waiting for information when
25 it -- at the time it was approved?

Poliski - Direct (Bar)

12

1 Q After it was -- well, at the time that it was approved,
2 were you waiting on any additional information?

3 A I don't recall.

4 Q Okay. Do you recall whether or not this loan was one
5 that was walked around?

6 A I don't recall, no.

7 Q Do you know an individual named Anthony Bonomo?

8 A I know of the name.

9 Q Okay. And how do you know the name Anthony Bonomo?

10 A I remember him being a borrower of Nova Bank.

11 Q Okay. Do you recall whether or not he was a client of
12 Ballamor Capital Management?

13 A I believe he was.

14 Q And do you recall whether or not the bank made a loan to
15 Mr. Bonomo in the amount of \$4.5 million?

16 A I don't recall specifically.

17 Q Okay. Do you recall any discussion at any loan committee
18 about the Anthony Bonomo \$4.5 million loan?

19 A I don't.

20 Q Do you recall anyone telling you that Mr. Bonomo's
21 loan -- a portion of those proceeds would be used to purchase
22 Nova Bank stock?

23 A No, I don't.

24 Q Mr. Poliski, did you have any involvement with reporting
25 the bank's capital to regulators?

Poliski - Direct (Bar)

13

1 A No, I did not.

2 Q Were you familiar with an individual named Charles
3 Gallub?

4 A The name is -- does sound familiar, yes.

5 Q And why does the name sound familiar?

6 A As a customer of Nova Bank.

7 Q And do you know whether or not Mr. Gallub had any loans
8 with Nova Bank?

9 A I believe he did.

10 Q Do you recall a \$500,000 loan to Mr. Gallub in December
11 of 2009?

12 A I don't specifically recall.

13 Q Okay. Do you recall whether Brian Hartline or anyone
14 else told you that the bank -- that the loan would be used to
15 purchase Nova Bank stock?

16 A I don't recall.

17 Q (Brief pause.)

18 Mr. Poliski, were you aware that the bank had
19 applied for TARP funding?

20 A Yes, I was aware.

21 Q And what did -- what were you told?

22 A That we had -- the bank did -- the bank did make an
23 application for TARP funding, and that a condition of the
24 funding was that the bank raise a certain amount of level of
25 capital in order for the TARP funding to take place.

Poliski - Direct (Bar)

14

1 Q Okay. And as part of the senior management team, were
2 you at -- were you advised about this TARP funding? Is that
3 how you knew?

4 A Yes.

5 Q And was Mr. Hartline somebody who advised the senior
6 management team?

7 A Yes, he was.

8 Q And as far as raising the capital contingency for the
9 TARP funding, did you have anything to do with that?

10 A No, I did not.

11 Q Did you have anything to do with telling any regulator
12 about the capital contingency related to the TARP funding?

13 A No, I did not.

14 Q In or about May of 2010, do you recall whether or not the
15 bank's outside auditor had any issues with the capital at the
16 bank?

17 A I recall there being some discussion about the bank's
18 capital level, yeah.

19 Q Okay, and --

20 A Don't remember the timing of it.

21 Q And what was the issue on the bank's capital level at the
22 time?

23 A That the -- in general, that the capital level was low,
24 was too low.

25 Q Okay. And do you recall whether or not the capital

Poliski - Direct (Bar)

15

1 issues and the low levels were related at all to the treatment
2 of any loans that the bank had?

3 MR. EGAN: Objection, leading.

4 THE COURT: Sustained.

5 BY MS. BARRY:

6 Q Do you know what, if anything, affected the capital
7 levels at the time of the audit?

8 A I know the bank -- as I recall, some of the bank's
9 investments were downgraded, and some of the loans that were
10 troubled loans, that were -- had to be charged off.

11 That impacts the bank's capital.

12 Q Okay. Do you know whether or not Mr. Levin's \$5 million
13 loan had to be charged off?

14 A Yes.

15 Q Okay. And at any point in time did Brian Hartline
16 discuss with you that the Levin loan for \$5 million, the \$4.5
17 million Bonomo loan, or the \$500,000 Gallub loan, that any of
18 that -- any of the proceeds of those loans had been used to
19 purchase Nova Bank stock?

20 A I don't recall that, no.

21 MS. BARRY: May I have a moment, Your Honor?

22 THE COURT: Surely.

23 MS. BARRY: No further questions, thank you.

24 THE COURT: Any questions?

25 MR. EGAN: Yes, Your Honor.

Polinski - Cross (Ega)

16

1 (Brief pause.)

2 MR. EGAN: Morning, Mr. Poliski.

3 THE WITNESS: Good morning.

4 CROSS-EXAMINATION

5 BY MR. EGAN:

6 Q Safe to say this all happened over six years ago, right?

7 A Yes.

8 Q And your memory of it is probably fairly faded?

9 A Probably.

10 Q But you do remember that there was a loan to Mr. Levin,
11 correct?

12 A Yes.

13 Q Now, let's talk a little bit about your job. You were
14 the Chief Credit Officer at Nova Bank?

15 A Correct.

16 Q And as the Chief Credit Officer, you were, essentially,
17 in charge of all the underwriters?

18 A Correct.

19 Q And, so, Mr. Madiany reported to you?

20 A Yes, he did.

21 Q And Mr. Madiany's job was to present to you a loan in a
22 position where you could accurately determine whether or not
23 you were going to approve it to go onto the loan committee,
24 correct?

25 A Correct.

Polinski - Cross (Ega)

17

1 Q And no loan could actually go to the loan committee,
2 without your approval, isn't that correct?

3 A That is correct.

4 Q And particularly not a loan like -- such as the one of
5 Mr. Levin?

6 A Correct.

7 Q So, before anybody on the loan committee voted to approve
8 this loan, you would have had to have already said it was okay
9 by you, right?

10 A Yes.

11 Q And when you made that decision, whether it was okay by
12 you to go to the loan committee, Brian Hartline didn't put any
13 pressure on you, did he?

14 A Not that I recall, no.

15 Q Now, I want to just talk a little bit about the loan
16 process itself.

17 Essentially, a borrow is requested to send in
18 certain information, correct?

19 A Yes.

20 Q And that request is made by an individual who is
21 actually -- I guess they call them a loan -- the manager, the
22 loan manager, or a --

23 A A loan officer, or a loan --

24 Q Loan officer?

25 A Yes.

Polinski - Cross (Ega)

18

1 Q And that was Mr. Patterson's job, right?

2 A He was one of the loan officers, yes.

3 Q All right. And in -- and this particular loan -- Mr.
4 Patterson was the -- was the loan officer, correct?

5 A Yes.

6 Q And --

7 A You're speaking of the Mr. Levin loan?

8 Q Yeah.

9 A Yes.

10 Q And you're looking at G-43 there, correct?

11 A That's correct.

12 Q And it does say Thomas Patterson as the relationship
13 manager?

14 A Yes.

15 Q So, that means that the information that was provided to
16 you would have been information that came from him?

17 A Yes.

18 Q Now, you talked a little bit about the purpose of the
19 loan. Remember being asked about that?

20 A Yes.

21 Q And in this particular one it's --

22 MR. EGAN: And if we could have 43 up for the jury?
23 And if you could blow-up the middle section there? Yeah,
24 right there.

25 BY MR. EGAN:

Polinski - Cross (Ega)

19

1 Q The purpose for the loan is financial investment,
2 correct?

3 A Yes.

4 Q Now, the reason that's on there is because sometimes the
5 purpose of the loan is important, correct?

6 A Yes.

7 Q And that would be if the proceeds of the loan -- if the
8 loan was going to be paid off based upon whatever it was the
9 individual was -- was doing with it, right?

10 A Correct.

11 Q So, in other words, if I was running a business and I
12 needed the money to run my business, you might want to know if
13 my business is going to succeed, correct?

14 A Correct, that's correct.

15 Q But in other instances it's not nearly as important, is
16 it?

17 A It's -- correct, it's a case-by-case basis.

18 Q And, so, in an individual where the money that was going
19 to be paying back the loan was coming from an individual's
20 personal wealth, what they were going to do with the money
21 would not be very important, would it?

22 A That's correct, yes.

23 Q And in -- you would agree with me that a financial
24 investment is a pretty vague statement about what's going to
25 be done with the money, right?

Polinski - Cross (Ega)

20

1 A I would agree, yes.

2 Q And, essentially, it could have meant a financial
3 investment in anything, right?

4 A Sure, yes.

5 Q Including Nova Bank, right?

6 A Yes.

7 Q Now, I want to take a look at some of the details of this
8 document.

9 And if you like, you can use the one in front of
10 you, or the screen, whatever's -- makes you more comfortable.

11 Right below where it says it's for financial
12 investment, you see the rate?

13 A Yes.

14 Q It says, "Wallace (phonetic) at WSJ prime, plus one-
15 percent, seven-percent floor?"

16 A Yes.

17 Q That -- that's not an unusual rate, correct?

18 A I can't recall at the time, then -- I'm assuming that it
19 was not an unusual rate at the time.

20 Q Well, you don't remember there being anything out of line
21 with the rate of the loan, correct?

22 A No, no.

23 Q And if you go down below, a little bit, where it says,
24 "unsecured," right?

25 A Yes, yes.

Polinski - Cross (Ega)

21

1 Q Below that is the guarantee, and it lists a number of
2 different investment sources. Those are guarantors of the
3 loan, correct?

4 A Correct.

5 Q And, so, the cash that they have would be important to
6 the loan, correct?

7 A Correct.

8 Q Now, if we could turn to Page 3. You see that?

9 MR. EGAN: If we could blow-up the top two sections
10 there?

11 BY MR. EGAN:

12 Q It says there the primary source of repayment is business
13 cash flow, correct?

14 A Yes.

15 Q And that would be the cash flow from these Banyon Funding
16 and other businesses that Mr. Levin has?

17 A I'm assuming so, yes.

18 Q And the next one was personal cash flow, right?

19 A Yes.

20 Q And that means, basically, how much money Mr. Levin has?

21 A Yes.

22 Q Now, do you remember Mr. Levin was an extremely wealthy
23 man?

24 A I remember him having a high net worth, and -- I don't
25 remember specifics about his income, but I knew he was -- to

1 qualify for a loan like this he would have had to have been.

2 Q Right. So, if we go down below, do you see where it says
3 "debt" -- or, no, the very next box, thank you -- "debt
4 service cover ratio?"

5 A Yes.

6 Q That's an important factor, correct?

7 A Very important, yes.

8 Q And in this case, Mr. Levin's debt service coverage ratio
9 was extremely good, correct?

10 A Yes, 3.3.

11 Q And that would have been one of the main reasons why you
12 approved this loan, wouldn't it?

13 A Yes.

14 MR. EGAN: And, if we can go into the next box?

15 Thank you.

16 BY MR. EGAN:

17 Q It says that your analysis -- or, the analysis is
18 actually Mr. Madiany's analysis, correct?

19 A (No verbal response given.)

20 Q But you're --

21 A Yes.

22 Q Yeah, but you're accepting what he's telling you?

23 A Yes.

24 Q It's based on financial statements for two years,
25 correct, '07 and '08?

1 A Yes.

2 Q They're reviewed by an independent accounting firm,
3 correct?

4 A Yes.

5 Q And, if you go down to the next paragraph, it says --
6 showed net income of \$105.3 million, correct?

7 A Yes.

8 Q And, if we go down to the paragraph below, it says his
9 ballad sheets -- balance sheet assets, fiscal year '08, showed
10 \$370.7 million, right?

11 A Yes.

12 Q Eight-point-eight million in cash, right?

13 A Yes.

14 Q Three-hundred-forty-point-three in receivables, correct?

15 A Yes.

16 Q And then, the next line down, 5.1 million value of
17 aircraft, correct?

18 A Yes.

19 Q And, 3.7 million in an office condominium?

20 A Yes.

21 Q So, those are the reasons you approved this loan, right?
22 Because this guy has a lot of money?

23 A Essentially, yes. Yeah.

24 Q And when you approved this loan, you didn't have -- I
25 mean, you approved it because you thought it was the right

1 thing to do, right?

2 A Right.

3 Q Now, we -- just go to the last page.

4 And that is, indeed, your signature at the bottom,
5 correct?

6 A Yes, it is.

7 Q And, so, in addition to recommending the loan go to
8 committee, you also signed that you approved of the loan?

9 A That's correct.

10 Q And you have no -- no recollection of Brian Hartline ever
11 putting any pressure on you to do that, correct?

12 A No, I do not.

13 Q Now, you were asked a little bit about the minutes of the
14 loan committee meetings, right? Remember that? Or maybe you
15 weren't.

16 You were asked about the loan committee meetings,
17 correct?

18 A Yes.

19 Q And, minutes were taken at the loan committee meetings,
20 correct?

21 A Yes.

22 Q And those minutes that were taken at the loan committee
23 meeting, were they, like, everything that got said at the loan
24 committee?

25 A I don't recall. But I would -- I don't recall

1 specifically.

2 Q Well, do you remember that if loans were discussed and
3 not approved, that they -- they would not show up in the
4 minutes, that they'd be deferred to a later date?

5 A I don't recall specifically, but I believe if a loan was
6 discussed, then it would have been reflected in the minutes.

7 Q Okay.

8 A And the action taken, whether it was approved, tabled,
9 deferred, would have been reflected in the minutes.

10 Q All right. But you did remember that there was a list of
11 loans presented that had been approved in-between meetings,
12 and they would be ratified, correct?

13 A There -- there was a list of approved loans that was
14 presented to each loan committee, yes.

15 Q And if -- if we could show you D-47, it will be on your
16 screen there -- in a second.

17 Do you recognize that document, sir? We can blow it
18 up so you can see a little better.

19 A Thank you.

20 Q Sorry about that. You see that?

21 A Yes, that is the --

22 Q That's --

23 A -- loan committee meeting minutes from --

24 Q And, the date is July 7, 2009, correct?

25 A Correct.

Polinski - Cross (Ega)

26

1 Q And not -- you've seen the loan committee meeting
2 minutes, that -- that's -- this is what they look like, right?

3 A That's the format as I recall them, yes.

4 Q Okay. And, if you -- first of all, if you notice
5 "members," Brian Hartline, it says "absent," correct?

6 A Yes.

7 Q So, that means he wasn't even at this meeting, right?

8 A Correct.

9 Q And, if we go to paragraph two, it says, "The committee
10 reviewed and approved ratification of the loans approved
11 report for Nova Bank for June 2009," do you see that?

12 A Yes.

13 Q Do you remember that's something you did at all of these
14 meetings?

15 A I believe that was done at each meeting, yes.

16 Q All right. And now if we could go to Page 2 of this
17 exhibit, which we're going to have to -- oh, we got it
18 together already.

19 MR. EGAN: If we could blow-up that top part?

20 BY MR. EGAN:

21 Q And if you note the third one from the bottom there, you
22 see that?

23 A Yes.

24 Q And -- and that's George Levin, correct?

25 A Yes.

Polinski - Cross (Ega)

27

1 Q For \$5 million, correct?

2 A Yes.

3 Q And it's -- Mr. Patterson was the relationship manager,
4 correct?

5 A Yes.

6 Q And it's for financial investments?

7 A (No verbal response given.)

8 Q Now, you were asked on direct examination about Mr.
9 Bonomo.

10 Do you have, really, any independent recollection of
11 the loan to Mr. Bonomo?

12 A I don't.

13 Q But if you approved that loan to go to the loan
14 committee, it would have been based upon the strength of his
15 financial records, correct?

16 A Yes.

17 Q And, you were aware that Mr. Bonomo also had a
18 longstanding relationship with lo -- with Nova Bank?

19 A I believe so, yes.

20 Q And that he had another company that had money at Nova
21 Bank?

22 A I don't recall that specifically.

23 Q And with regard to Mr. Gallub, you -- you also don't
24 really remember that one either, right?

25 A That's correct.

Polinski - Cross (Ega)

28

1 Q But you do remember who Mr. Gallub is?

2 A I remember the name.

3 Q And you do remember that he --

4 THE COURT: Excuse me, let's take a break, counsel.
5 One second, please.

6 MR. EGAN: Sure.

7 THE COURT: Let's take a brief recess.

8 (Whereupon the jury exits the courtroom.)

9 THE COURT: You may step down, sir. Fifteen
10 minutes, please.

11 MR. EGAN: Thank you, Your Honor.

12 (Proceedings adjourned at 10:56 a.m.)

13 (Recess.)

14 (Proceedings continued at 11:14 a.m.)

15 (Jury not present.)

16 DEPUTY: All rise.

17 (Whereupon the jury enters the courtroom.)

18 DEPUTY: Ladies and gentlemen, we are back on the
19 record.

20 THE COURT: All right, you may be seated. Thank
21 you. You may continue.

22 MR. EGAN: Thank you, Your Honor.

23 BY MR. EGAN:

24 Q Now, Mr. Poliski, do you have any recollection of being
25 involved in a prior application that Mr. Levin made to borrow

Polinski - Cross (Ega)

29

1 money in the spring of 2009?

2 A I don't recall.

3 Q This would be before the June date.

4 A I don't recall.

5 MR. EGAN: If -- could we have Government's 15,
6 please?

7 BY MR. EGAN:

8 Q And, sir, if you could just take a quick look at that,
9 the bottom e-mail is an e-mail from Brian to Mr. Bekkedam,
10 yourself, and Mr. Patterson.

11 And it appears to be about obtaining some tax
12 returns and information from Mr. Levin in order for him to
13 assume -- sell some bonds and assume some Nova debt. Do you
14 see that?

15 A Yes.

16 Q Does that refresh your recollection at all that Mr. Levin
17 had previously supplied information to the bank in the fall --
18 the spring of 2009?

19 A Only to the extent I see what's here in the e-mail. I
20 don't recall any specifics of that loan.

21 Q Okay. And would that be because it would be up to Mr.
22 Patterson and Mr. Madiany to work that up before it got to
23 you, probably?

24 A That's possibly the case, yes.

25 MR. EGAN: You can take that down.

1 BY MR. EGAN:

2 Q Now, after the loan was -- was issued to Mr. Levin, that
3 was on June 30th of 2000 -- 2009, correct?

4 A Yes.

5 Q You testified on direct that you had -- don't recall at
6 all being told that Mr. Levin was investing money into Nova
7 Bank, is that correct?

8 A That's correct.

9 MR. EGAN: Okay. If we could have Government's 48,
10 please?

11 BY MR. EGAN:

12 Q And, sir, if you take a look at that, if we can blow-up
13 the e-mail, that is an e-mail from a Dina Gaskins. She worked
14 at Nova Bank, right?

15 A Yes.

16 Q And you are a recipient of this e-mail, correct?

17 A Yes.

18 Q And the subject is "Incoming Wire?"

19 A Yes.

20 Q And it says, "I want to let you know the wire of \$5,000
21 has come in from George and Gayla Sue Levin."

22 Does that refresh your recollection at all as to
23 whether you might have known that he was investing the funds
24 in the bank?

25 A I guess it -- it would, but I don't -- I don't recall

Polinski - Cross (Ega)

31

1 specifically, but this indicates that that was -- the money
2 came in for something.

3 Q And, certainly, you're on this e-mail, so you're being
4 told about the money coming in, correct?

5 A Yes.

6 Q So, Mr. Hartline's not hiding the fact that this money's
7 coming in from you, correct?

8 A No.

9 Q Now, after the loan takes place, there's -- well, let me
10 ask you this question, when -- when a loan is amended, and
11 there are new terms that are developed, it -- it requires a
12 whole new process, correct?

13 A Whole new approval process?

14 Q Yeah.

15 A If the terms -- yes, if the terms are more favorable to
16 the bank, then certainly the -- that process is not as
17 stringent.

18 But, for example, if -- if we wanted to increase an
19 interest rate, or if we wanted to shorten a term of a loan,
20 that wouldn't necessarily require the same level of scrutiny
21 or approval as if we were giving up collateral or reducing an
22 interest rate.

23 You know, if you understand the distinction between
24 more favorable to the bank or more favorable to the borrower.

25 Q Sure. And all I'm really getting at is you don't just

Polinski - Cross (Ega)

32

1 change the terms of the loan without going through some
2 process, one process or another?

3 A That's correct, yes.

4 Q And part of that would probably require some work to be
5 done -- I should strike the probably -- part of that would
6 require some work to be done with regard to the risk
7 assessment summary, correct?

8 A Yes.

9 MR EGAN: I want to show you what's been marked as
10 D-48 -- and if we can blow-up the top one?

11 BY MR. EGAN:

12 Q Do you recognize this document, sir?

13 A Do I recall it, is that the --

14 Q Well, let me just add, it's a e-mail from Joe Madiany --

15 A Mm-hmm.

16 Q -- to you on July 16, 2009, correct?

17 A Yes.

18 Q And it's after the loan was approved, correct?

19 A Yes.

20 Q And it talks about an updated RAS?

21 A Yes.

22 Q So, this would indicate, would it not, that at some point
23 after June you received another --

24 THE COURT: Excuse me -- excuse me, one second --

25 MR. EGAN: -- iteration of the RAS, with some

Polinski - Cross (Ega)

33

1 updates?

2 THE COURT: Counsel? Counsel? Excuse me one
3 second. Let's take another recess. We'll take a brief
4 recess.

5 (Proceeding adjourned at 11:19 a.m.)

6 (Recess.)

7 (Proceeding continued at 11:21 a.m.)

8 (Jury not present).

9 DEPUTY: All rise.

10 (Whereupon the jury enters the courtroom.)

11 THE COURT: All right, thank you, you may be seated.
12 I will write her a thank you note and tell her that I know
13 that she's really a secret, closet North Carolina fan.

14 But you may continue.

15 MR. EGAN: Thank you, Your Honor.

16 BY MR. EGAN:

17 Q So, Mr. Polinski, you don't have any independent
18 recollection of this document, correct?

19 A That's correct.

20 Q But it's not unusual, is it, to have a RAS go through a
21 couple of different iterations, correct?

22 A It's happened. It happens, yes.

23 MR. EGAN: Okay. You can take that down. If we
24 could go to Government's 118?

25 BY MR. EGAN:

Polinski - Cross (Ega)

34

1 Q Now, you see that document, sir? That's another
2 e-mail from Mr. Madiany to you, correct?

3 A No, it's to Tom Patterson.

4 Q Oh, I'm sorry. You are -- I stand corrected.

5 All right, we can take that down.

6 You were aware, were you not, sir, that there was an
7 attempt to alter the terms of Mr. Levin's agreement so that
8 his loan would be collateralized, do you remember that?

9 A I don't recall specifically.

10 Q Do you remember that Mr. Levin wanted to get better terms
11 for his loan, and in return Nova Bank sought
12 collateralization?

13 A I don't recall.

14 MR. EGAN: If we could have Defense 93, please? And
15 if we could do the top e-mail?

16 BY MR. EGAN:

17 Q And this is an e-mail from Mr. Patterson in March of
18 2010, correct?

19 A Yes.

20 Q And it's to a -- a Frank Preve. Did you ever speak with
21 a Frank Preve?

22 A No, never.

23 Q But you are copied on it, correct?

24 A Yes.

25 Q And it says, "Thanks for the information and the phone

Polinski - Cross (Ega)

35

1 call. In an effort to lower that rate, Nova would like to
2 file a mortgage on the Madison (phonetic) house."

3 Do you remember anything about that?

4 A I don't, no.

5 Q Okay. But it would be consistent with bank policy that
6 if they were going to lower a rate, they would want to get
7 collateral, correct?

8 A Want to get something, yes.

9 Q And, indeed, if there were issues, potentially, with
10 regard to collecting a loan collateral, adding collateral
11 would be a good idea, right?

12 A Sure, yes, that's correct.

13 MR. EGAN: And if I could go to D-137, then?

14 (Brief pause.)

15 MR. EGAN: May I approach, Your Honor?

16 THE COURT: Yes, sir.

17 BY MR. EGAN:

18 Q Sir, I'm going to show you what's been marked previously
19 as D-137.

20 Apparently we don't have it on the screen.

21 MR. EGAN: May I inquire from here, Your Honor?

22 THE COURT: Yes, sir.

23 MR. EGAN: Thank you.

24 BY MR. EGAN:

25 Q Sir, it says -- this is a memo, correct?

Polinski - Cross (Ega)

36

1 A Yes.

2 Q On Nova Bank letterhead?

3 A Yes.

4 Q And it's signed by you, correct?

5 A Yes, it is.

6 Q And it contains a security agreement for Mr. Levin?

7 A Yes.

8 Q And it relates to Mr. Levin's loan and a security
9 interest in a Madison house, correct?

10 A Sure.

11 Q If you want, you can turn to the attachment, which is the
12 security agreement itself.

13 MS. BARRY: Your Honor, I'm not certain that the
14 Government has a copy of the Government's exhibit.

15 MR. EGAN: I think there's been, Your Honor, a
16 numbering issue. I think it's actually D-95 was the one you
17 provided me with.

18 UNIDENTIFIED SPEAKER: I apologize.

19 THE COURT: Thank you.

20 MS. BARRY: May I just look to make sure that that's
21 the --

22 THE COURT: Absolutely, certainly.

23 MR. EGAN: And if we can get it on the screen, I can
24 lead Mr. --

25 THE WITNESS: Sure.

Polinski - Cross (Ega)

37

1 MR. EGAN: -- Poliski.

2 (Side comments off the record.)

3 MR. EGAN: All right, now we have on the screen D-
4 95. Does the Government have a copy?

5 MS. BARRY: Yes, thank you.

6 BY MR. EGAN:

7 Q And the attachment to that, sir, is, indeed, a security
8 agreement, is it not?

9 A Yes.

10 Q And, that's an agreement that was sent to Mr. Levin by
11 the bank, correct?

12 A Yes.

13 Q And, that was to secure his -- his loan that he had taken
14 out in June?

15 A Correct.

16 Q And, the security is in a property known as the "Madison
17 house," correct?

18 A Looks like the collateral is a -- a note executed by
19 Madison house, and the bank -- looks like the bank took an
20 assignment or a security interest in a -- in a note.

21 Q Okay.

22 A It's a little blurry on the screen, that's probably my
23 eyes.

24 Q Now, I just want to go back now to Mr. Gallub.

25 And, I want to show you what's been marked as

Polinski - Cross (Ega)

38

1 Government's Exhibit 5. It's not been entered into evidence.

2 And Government's Exhibit 5 is loan committee meeting
3 minutes from September 30th of 2008, correct?

4 A Yes.

5 Q And September 30th of 2008, this is some seven months
6 before June of 2009, correct?

7 A Yes.

8 Q And paragraph two, again, speaks of the ratification of
9 loans, correct?

10 A Yes.

11 Q Now, are you familiar with Mr. Gallub's company, Bellmawr
12 Creek?

13 A I -- I recall the name, but I -- that's what I recall
14 about it.

15 Q And if we go to the third page of this document, the last
16 loan down -- in the first section, I'm sorry. It is a
17 \$250,000 loan to Bellmawr Creek, correct?

18 A Yes.

19 Q Do you have any recollection as to whether Mr. Gallub
20 invested that money into Nova Bank?

21 A I do not.

22 Q Now, as a credit manager, you were responsible for
23 assisting when various examinations took place, correct?

24 A Correct.

25 Q And Nova Bank actually was audited by KPMG, correct?

1 A Yes.

2 Q And in addition, Nova Bank's loan portfolio was reviewed
3 by a company called Merit Partners, do you remember that?

4 A That's correct, yes.

5 Q And when Merit Partners would come in to do a loan
6 review, they would come in, basically, and say, "We want to
7 see X number of loans," right?

8 A Yes, they took a sample of loans, yes.

9 Q And they would pick the loans?

10 A Yes.

11 Q And then they would look at the -- all of the loan
12 documentation, correct?

13 A Underwriting documents, yes.

14 Q And they would then write a report, and either say
15 there's something wrong with this, or not, to the bank,
16 correct?

17 A Yes.

18 Q And KPMG as part of its process would also look into the
19 lending portfolio, would it not?

20 A Correct.

21 Q And the same thing, KPMG would come into the bank, right?

22 A Yes.

23 Q They would bring a bunch of folks with them?

24 A Yes.

25 Q They would ask for a whole lot of documents?

Polinski - Cross (Ega)

40

1 A Yes.

2 Q And they would get whatever they asked for?

3 A Yes, that's correct.

4 Q Certainly from you, right?

5 A Yes.

6 Q Now, when Merit Partners came in, or KPMG came in, did
7 Brian Hartline ever ask you to hide a file and not show it to
8 those people?

9 A Not that -- no, not that I recall.

10 Q Now, on top of that, bank examiners came in as well,
11 correct?

12 A That's correct.

13 Q And when they came in, they would do the same thing,
14 right?

15 A Yes, they would.

16 Q They would open up the files and ask to see whatever they
17 wanted to see?

18 A Yes.

19 Q And one of the things they would review would be loans,
20 correct?

21 A That's correct.

22 Q Also one of the things they would review, I would assume,
23 is investments, right?

24 A Yes.

25 Q Same thing with KPMG?

Polinski - Cross (Dun)

41

1 A I assume so, yes.

2 Q You're familiar with something called Reg. O, right?

3 A Yes.

4 Q And that has to do with loans to shareholders?

5 A Yes.

6 Q Nova was never once cited for any problem with Reg. O
7 with regard to any of these loans, was it?

8 A Not that I recall.

9 MS. BARRY: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. EGAN:

12 Q And same thing with examiners, Mr. Hartline never asked
13 you to hide any document from any examiner, did he?

14 A Not that I recall, no.

15 MR. EGAN: I have no further questions, Your Honor.

16 MR. DUNCAN: May I, Your Honor?

17 THE COURT: Yes, sir.

18 MR. DUNCAN: Thank you.

19 MR. DUNCAN: Good morning, Mr. Poliski.

20 THE WITNESS: Morning.

21 CROSS-EXAMINATION

22 BY MR. DUNCAN:

23 Q How are you today?

24 A Good.

25 Q Good. Mr. Poliski, your title was Chief Credit Officer,

Polinski - Cross (Dun)

42

1 do I have that correct?

2 A Correct.

3 Q And that was a pretty high position at the bank, at the
4 time?

5 A Yes.

6 Q And, sir, you were first interviewed by the Government
7 agents in this matter in August of 2012, is that correct?

8 A I -- I don't -- it may have been, it was a while ago. I
9 don't recall the -- the month or date.

10 Q If you saw a copy of the report that the Government
11 agents made, would that refresh your recollection?

12 A Yes, I assume so.

13 MR. DUNCAN: Could we see Defense Exhibit 273,
14 please? And it's easier, I have a copy, if I may approach,
15 Your Honor.

16 MS. BARRY: Your Honor, we'll stipulate to the date.

17 THE COURT: All right, thank you.

18 MR. DUNCAN: Thank you. Thank you, Ms. Barry.

19 BY MR. DUNCAN:

20 Q So, the first time you were interviewed by the Government
21 agents were approximately three years after George Levin's
22 loan was authorized by Nova Bank?

23 A Yes.

24 Q And then you didn't speak to the Government investigators
25 again until October of 2015, is that correct?

Polinski - Cross (Dun)

43

1 A That's correct.

2 Q And that was almost six years after the loan, is that
3 correct?

4 A Yes.

5 Q Sir, you were very involved in the approval of the loan
6 to Mr. Levin on June 30, 2009, correct?

7 A Yes.

8 Q And you know that the loan was for \$5 million, right?

9 A Yes.

10 Q And one of the people at the bank who also worked on that
11 loan was Thomas Patterson, correct?

12 A Yes.

13 Q And who's Mr. Patterson?

14 A He was the Chief Lending Officer of the bank.

15 MR. DUNCAN: Could we see Government's Exhibit 48
16 again, please? And could we have that published to the jury?
17 I believe it's in evidence, Your Honor.

18 THE COURT: Any objection?

19 MS. BARRY: No, Your Honor.

20 THE COURT: Granted.

21 MR. DUNCAN: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 BY MR. DUNCAN:

24 Q So, Mr. Egan asked you a little bit about this. I have
25 just a couple of other questions about it.

1 So, this is an e-mail that was sent from Dina
2 Gaskins to you and five other people at Nova Bank, correct?

3 A Yes.

4 Q And, who's Dina Gaskins?

5 A I don't recall what her role was at the bank. I know
6 she -- remember her working at the bank, but I don't remember
7 what her role was.

8 Q And clearly, she wanted you to know that this \$5 million
9 wire had come in from George and Gayla Sue Levin, correct?

10 A Yes.

11 Q And the other five people, they all got the same notice
12 you got, right?

13 A Yes.

14 Q Nobody was hiding the information that a loan had gone
15 out to Mr. Levin on June 30th, and then a wire had come back
16 in for the exact same amount on the exact same day, correct?

17 A No, that's correct.

18 Q You testified earlier that Nova's heavily regulated by
19 bank regulators, correct?

20 A Yes.

21 Q And any of the records of the bank, including your
22 e-mails, would be available to the bank regulators, correct?

23 A Yes.

24 Q Sir, you testified, I believe, when Ms. Barry was asking
25 you questions, that you'd never met our client, Barry

1 Bekkedam, correct?

2 A Correct.

3 Q He had resigned from the board of Nova Holding Companies
4 long before you even got a job there, right?

5 A Correct.

6 Q You never spoke to Mr. Bekkedam, did you?

7 A I -- I did speak with him on the phone on a couple of
8 occasions.

9 Q And -- and pleasant conversations?

10 A Yes, as I recall.

11 Q You never saw him around the offices, did you?

12 A No, never.

13 Q He has a company called Ballamor Capital, correct?

14 A Yeah.

15 Q Or, he had a company?

16 A Yes.

17 Q Sorry. Nobody from Ballamor Capital ever tried to
18 influence any of your banking decisions, did they?

19 A Never, no.

20 Q You testified on direct that many of Mr. Bekkedam's
21 clients at Ballamor Capital had loans with Nova Bank, correct?

22 A Yes.

23 Q Some of those loans were just mortgages on their houses,
24 right?

25 A As I recall.

Polinski - Cross (Dun)

46

1 Q Mr. Bekkedam never called you or communicated with you in
2 any way to try to influence any of your decisions on making
3 loans to any of his clients, correct?

4 A That's correct.

5 Q And you knew -- you knew Mr. Bekkedam had approximately
6 150 clients, is that correct?

7 A I don't know how many clients he had.

8 Q Okay, you didn't know all their names, right?

9 A That's correct.

10 Q You know -- you testified on direct that Mr. Levin got a
11 loan -- you know that Mr. Levin was not a client of Mr. Bal --
12 of Mr. Bekkedam, correct?

13 A I -- I'm not aware of if he was or wasn't.

14 Q Okay. But Mr. Bonomo was a client of Ballamor Capital,
15 correct?

16 A I do recall that, yes.

17 Q Okay. You were asked questions about the -- Mr. Bonomo's
18 loan, but you weren't involved in Mr. Bonomo's loan, were you?

19 A I don't recall being --

20 Q The \$4.5 million loan.

21 A Yeah, I don't recall being -- I knew he had loans with
22 us, or a loan with us, but I don't recall being involved in
23 it.

24 Q One of his loans was for the mortgage on his house,
25 right?

Polinski - Cross (Dun)

47

1 A I don't recall.

2 Q Okay. Do you know his company, PRI?

3 A No.

4 Q Sir, Mr. Gallub, you don't know if Mr. Gallub was a
5 client of Mr. Bekkedam's, do you?

6 A I don't recall.

7 Q Sir, when you met with the Government investigators, you
8 were asked questions about Mr. Bekkedam's -- excuse me -- Mr.
9 Bekkedam's clients, correct?

10 A I believe so, yes.

11 Q And you told the Government that Mr. Bekkedam's clients
12 went through the normal credit review and approval process,
13 correct?

14 A That's correct.

15 Q And that's true, right?

16 A Yes.

17 Q You also told them that while you were Chief Credit
18 Officer, nobody at Ballamor Capital, or Mr. Bekkedam, received
19 any special treatment, is that correct?

20 A That --

21 MS. BARRY: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. DUNCAN:

24 Q Did you tell that to the Government investigators?

25 MS. BARRY: Objection, Your Honor.

Polinski - Cross (Dun)

48

1 THE COURT: Counsel, may I see you, please?

2 MR. DUNCAN: Sure.

3 (At sidebar.)

4 THE COURT: Okay, I just want the record to be
5 clear. The basis for your objection?

6 MS. BARRY: There's no predicate for these
7 questions. I don't know that -- there's no -- this -- these
8 are hearsay, and, Your Honor, there's been no impeachment.

9 I mean, he's just reading from the report now, and
10 it's -- I mean, we had an agreement on the terms of
11 impeachment.

12 But if we're going to get into this whole
13 discussion, that this is a report of the agent, it is not a
14 statement of the witness.

15 MR. DUNCAN: I think I can rephrase it, Your Honor,
16 and I can ask him while you were there, they never received
17 any special treatment.

18 MS. BARRY: Okay, that's fine.

19 MR. DUNCAN: Okay.

20 (End of sidebar.)

21 THE COURT: All right, the objection is sustained.
22 You may rephrase.

23 MR. DUNCAN: Thank you, Your Honor.

24 BY MR. DUNCAN:

25 Q Sir, you took your position as Senior Credit Officer very

Polinski - Redirect (Bar)

49

1 seriously, correct?

2 A Yes.

3 Q And while you were there, nobody, including Mr. Bekkedam
4 or any of his Ballamor clients, received any special treatment
5 while you were the Senior Credit Officer, correct?

6 A That's correct.

7 MR. DUNCAN: Thank you, Your Honor. I have no
8 further questions.

9 (Brief pause.)

10 REDIRECT EXAMINATION

11 BY MS. BARRY:

12 Q Mr. Egan asked you about Government's Exhibit 5, I
13 believe.

14 MS. BARRY: And, Your Honor, the Government would
15 move for the admission of Government's Exhibit 5, and ask that
16 it be published.

17 MR. EGAN: No objection.

18 MR. DUNCAN: No objection.

19 THE COURT: All right, granted as to each request.

20 MS. BARRY: Okay.

21 BY MS. BARRY:

22 Q Now, looking at Government's Exhibit 5, what is
23 Government's Exhibit 5?

24 A Loan committee minutes from September 30, 2008.

25 Q Okay. And if you would, take a look -- and, again,

1 looking at the members of -- of the loan committee, is Mr.
2 Hartline's name included?

3 A Yes, it is.

4 Q Okay. And looking at the minutes themselves, if you
5 could take a -- I know you took a look at it before, but is
6 there any mention or discussion of a \$250,000 loan to Charles
7 Gallub or his company, Bellmawr Creek?

8 A Not on this page, no.

9 Q Okay. And then Mr. Egan asked you to take a look at -- I
10 believe it was Page 3 -- or is it -- I'm sorry, is that -- are
11 there only two pages?

12 THE CLERK: It's three pages.

13 BY MS. BARRY:

14 Q Okay, Page 3, and he asked you is there a loan there in
15 the amount of \$250,000 for Bellmawr Creek?

16 A Yes, there is.

17 Q Okay.

18 MS. BARRY: Now, if we could, and this not -- has
19 not been moved into evidence yet, Your Honor, but if we could
20 show the witness Government's Exhibit G-4?

21 And does the witness have G-4 in front -- thank you.

22 BY MS. BARRY:

23 Q All right, looking at Government's Exhibit G-4, what is
24 G-4?

25 A G-4 is the risk assessment summary for Bellmawr Creek.

Polinski - Redirect (Bar)

51

1 Q And what is the loan amount?

2 A Two-hundred-fifty-thousand dollars.

3 MS. BARRY: Okay, and I'm sorry, if we can scroll to
4 the top again, just so we can see the date of the RAS?

5 THE WITNESS: September 30, 2008.

6 MS. BARRY: Okay, Your Honor --

7 BY MS. BARRY:

8 Q And if you could take a look at the last page of this --
9 of this exhibit? And is this a RAS for a \$250,000 loan in
10 September of 2008 that you approved?

11 A Yes, it is.

12 MS. BARRY: Okay, Your Honor, the Government moves
13 for the admission of Government's Exhibit 4.

14 MR. EGAN: No objection.

15 MR. DUNCAN: No objection.

16 THE COURT: Admitted.

17 MS. BARRY: And if we could just -- may we publish
18 Page 1, just the loan request portion, to the jury?

19 THE COURT: Yes.

20 BY MS. BARRY:

21 Q Okay. And, again, the date of the RAS is September 30,
22 2008? Is that right?

23 A Yes, it is.

24 Q Okay. And, if you look on the lefthand column, "Contact
25 Name," whose name is listed?

1 A Charles Gallub.

2 MS. BARRY: Okay. And, if we could scroll down to
3 the loan request section, please? Okay.

4 BY MS. BARRY:

5 Q And looking at the original purpose, what is the purpose
6 that's given?

7 A Investment purposes.

8 Q Okay. And, what is the amount?

9 A Two-hundred-fifty-thousand dollars.

10 MS. BARRY: Okay. And, if we could please go to
11 Page 2 of this exhibit?

12 And, if we can just show the "transaction comments,"
13 the first paragraph, please?

14 BY MS. BARRY:

15 Q Okay. Looking at "transaction comments," would you
16 please read the first two sentences related to this loan?

17 A "Bellmawr Creek, LLC, Nova Savings Bank existing
18 borrower, requests a \$250,000 commercial demand loan at Wall
19 Street Journal prime for a 24-month term.

20 "Proceeds will be used for investment purposes in
21 another project."

22 Q Okay. Is it indicated that this \$250,000 would be used
23 to purchase Nova Bank stock?

24 A No.

25 MS. BARRY: And we can take that down, please.

1 BY MS. BARRY:

2 Q Mr. Egan asked you questions about the guarantee for the
3 Levin \$5 million unsecured loan -- about the guarantee, and
4 that the guarantee for that loan were multiple Banyon
5 companies.

6 Do you recall that?

7 A Yes.

8 Q Okay. And do you know whether or not Mr. Madiany had
9 requested additional information on those Banyon companies
10 prior to the loan being approved?

11 A I don't recall.

12 Q Do you recall -- well, did you do the underwriting for
13 the loan, itself?

14 Who prepared the underwriting for that George Levin
15 loan?

16 A I don't recall. I assume it was Joe Madiany.

17 Q Okay, and would that be indicated --

18 A He's listed as an --

19 Q -- on the --

20 A As the analyst --

21 Q Okay.

22 A -- on the risk assessment summary.

23 Q Okay. So, what details on the Banyon companies that were
24 providing the guarantee being important to assess this loan
25 and to approve it?

1 A It could be if that was a primary source of repayment --

2 Q Okay.

3 A -- for the loan.

4 Q And, I know you walked through that with Mr. Egan that
5 the primary source of repayment would be cash flow from these
6 companies, and if -- you could take a look at that if that
7 would help you.

8 A Sure.

9 Yes, or other business entities.

10 Q Okay.

11 A Yes.

12 MS. BARRY: If we could, please, take a look at
13 Government's Exhibit 48, and I believe that it was published
14 previously, and may it be published again, Your Honor?

15 THE COURT: Yes.

16 MS. BARRY: Okay.

17 BY MS. BARRY:

18 Q Now, look at Government's Exhibit 48, what is the time
19 that this e-mail was sent?

20 A Two-forty-four p.m.

21 Q And, was that after the loan was approved? The Levin
22 loan? If you know.

23 A I don't know specifically. Typically, loan committees
24 were held in the morning, but I can't -- I can't say with
25 certainty.

Polinski - Redirect (Bar)

55

1 Q Okay. Is there anything on this e-mail that indicates
2 that this \$5 million wire from George and Gayla Sue Levin is
3 going to be used to purchase Nova Bank stock?

4 MR. EGAN: Objection. Leading.

5 THE COURT: Sustained.

6 BY MS. BARRY:

7 Q Would you please read the e-mail?

8 A "I wanted to let you all know that the wire for \$5
9 million has come in from George and Gayla Sue Levin."

10 Q Is there any additional information on this e-mail?

11 A No.

12 Q Any additional information about what this \$5 million is
13 going to be used for?

14 A No.

15 Q Mr. Egan asked you multiple questions about Mr. Levin and
16 his wealth, do you recall that?

17 A Yes.

18 Q And, he asked you questions about some kind of collateral
19 on this loan at some future date.

20 A Yes.

21 Q Do you recall that? Okay.

22 So, was this Levin loan for \$5 million that was
23 unsecured, was that at loan that was charged off?

24 A As I recall, yes.

25 Q And, what does "charged off" mean?

Dietrich - Direct (Bar)

56

1 A It means that the bank reserves for potential loan losses
2 in the future, and when the loan is charged off, it's -- it
3 impacts the bank's balance sheet and the bank's income
4 statement.

5 Q Okay.

6 A The bank's capital.

7 Q So, did he -- did he pay the \$5 million?

8 A I don't recall. Oftentimes, loans are charged off, and
9 borrowers pay after a loan's charged off.

10 Q Okay.

11 A I don't recall whatever happened with any or all of those
12 proceeds.

13 Q Okay.

14 MS. BARRY: May I have a moment, Your Honor?

15 THE COURT: Yes, ma'am.

16 MS. BARRY: No further questions. Thank you.

17 MR. EGAN: I have no further questions, Your Honor.

18 MR. DUNCAN: No, thank you, Your Honor.

19 THE COURT: Thank you, sir, you may step down, and
20 watch your step, please.

21 THE WITNESS: Thank you.

22 MS. BARRY: Your Honor, the United States calls
23 David Dietrich.

24 (Brief pause.)

25 D A V I D D I E T R I C H, GOVERNMENT WITNESS, SWORN.

Dietrich - Direct (Bar)

57

1 THE CLERK: Please state and spell your name for the
2 record.

3 THE WITNESS: My name is David Dietrich. D-I-E-T-R-
4 I-C-H.

5 MS. BARRY: May I proceed, Your Honor?

6 THE COURT: You may proceed.

7 MS. BARRY: Thank you.

8 DIRECT EXAMINATION

9 BY MS. BARRY:

10 Q Good morning, Mr. Dietrich.

11 A Good morning.

12 Q Mr. Dietrich, are you currently working?

13 A I'm working part-time. I'm retired, but work part-time.

14 Q Okay, and what's your part-time line of work right now?

15 A I'm working for a non-profit housing agency in Reading,
16 Pennsylvania.

17 Q And, prior to -- prior to your retirement, what line of
18 business were you in?

19 A Banking for 42 years.

20 Q And, did you go to college, sir?

21 A Yes, I did.

22 Q And, where -- what -- did you get any kind of degree?

23 A Bachelor's of Science and Math.

24 Q Okay. Did you get any post-college degree?

25 A I had two coll -- post-college -- or, actually, they're

Dietrich - Direct (Bar)

58

1 certificates, professional certificates.

2 Q Okay.

3 A One --

4 Q Go ahead.

5 A Graduate school in Retail Bank Management in the
6 University of Virginia. And, the Stonier Graduate School of
7 Banking.

8 Q Okay. And, were you a CPA, sir?

9 A No, I am not.

10 Q And, what's the last bank that you worked for?

11 A Nova Bank.

12 Q And, what time period did you work for Nova Bank?

13 A I think it was 2002 to 2012.

14 Q And, who hired you?

15 A Mr. Hartline.

16 Q And, do you see Mr. Hartline here in the courtroom today?

17 A Yes, I do.

18 Q And, can you point him out to us, please?

19 A He's the gentleman right there.

20 Q Okay.

21 MS. BARRY: Your Honor, --

22 THE COURT: The record shall so reflect.

23 MS. BARRY: Thank you, Your Honor.

24 BY MS. BARRY:

25 Q Now, prior to working at Nova Bank, had you worked with

Dietrich - Direct (Bar)

59

1 Brian Hartline before?

2 A Yes, I did.

3 Q And, where was that?

4 A I was at Main Street Bank Corp.

5 Q Okay. And, when you were hired by Nova Bank, what were
6 you hired to do?

7 A I was hired as head of Retail Banking.

8 Q And, as the head of Retail Banking, did you sit on any
9 committees?

10 A Yes, I did.

11 Q And, what committees did you sit on?

12 A I sat on the pricing committee and the loan committee.

13 Q Okay. And, on the loan committee, can you just tell us
14 what does -- what did the loan committee do?

15 A The loan committee would review loans for approval.

16 In some cases, they would -- well, they reviewed the
17 loans for the loan committee and then made approvals.

18 Q Okay. Now, who did you report to when you worked at
19 Nova?

20 A Mr. Hartline.

21 Q And, do you know an individual named Barry Bekkedam?

22 A Yes, I do.

23 Q And, how do you know Mr. Bekkedam?

24 A Mr. Bekkedam was the Chairman of the Board for the first
25 few years at Nova Bank.

Dietrich - Direct (Bar)

60

1 Q Okay, and did you have any interactions with him?

2 A Not really.

3 Q Okay. Did you ever meet him?

4 A Yes.

5 Q And, do you recognize him here today?

6 A Yes, I do.

7 Q Okay. And, can you point him out, please?

8 A Yes, he's the gentleman over on the right -- I mean, the
9 picture.

10 MS. BARRY: Okay. Your Honor, let the record
11 reflect that the witness has identified Defendant Barry
12 Bekkedam.

13 THE COURT: The record shall so reflect.

14 BY MS. BARRY:

15 Q Now, do you know whether or not Mr. Bekkedam had any
16 companies?

17 A Yes.

18 Q And, what was that company called?

19 A It was Ballamor Capital, I believe.

20 Q And, do you know what Ballamor Capital was?

21 A Well, --

22 Q What kind of company it was?

23 A I have a general idea, yes.

24 Q Okay, and what general idea?

25 A He did investment. Provided investment banking for

Dietrich - Direct (Bar)

61

1 people and, you know, personal financial.

2 Q Okay.

3 A Management.

4 Q And so, were any of his clients also customers of the
5 bank?

6 A Yes.

7 Q Was Barry Bekkedam a customer of the bank?

8 A Yes.

9 Q Was the -- was his company, Ballamor Capital, a customer
10 of the bank?

11 A Yes.

12 Q Do you recall an individual named George Levin and a loan
13 that was made to him?

14 A Yes.

15 Q Okay. Did you -- well, I'd like to show you what's been
16 marked as Government's Exhibit 43, and I believe it's in front
17 of you. It will be on the screen, and it -- also, a hard-
18 copy. Whichever's easier for you to look at.

19 And, this loan to George Levin, how much was it for?

20 A Five-million dollars.

21 Q Okay. And, do you -- do you recall if this was -- a \$5
22 million loan was at the upper limits of the bank's lending?

23 A I can't recall the top lending --

24 Q Okay.

25 A -- limit of the company.

Dietrich - Direct (Bar)

62

1 Q All right.

2 A Yeah.

3 Q Do you -- was this one of the largest personal loans that
4 you recall the bank making?

5 A I believe it's one of the largest I recall.

6 Q Okay. And, if you look, is this loan secured or
7 unsecured?

8 A It is unsecured.

9 Q Okay.

10 A That's collateral.

11 Q And, was this one of the largest unsecured loans that you
12 saw at the bank?

13 A Yes.

14 Q Okay. And, if you look at the last page, and if we could
15 just publish this last page, please?

16 A Mm-hmm.

17 MS. BARRY: And, may it be published, please?

18 THE COURT: Yes.

19 MS. BARRY: Thank you.

20 BY MS. BARRY:

21 Q And, looking at the last page, did you sign off on this
22 loan?

23 A Yes, that's my signature.

24 Q Okay. And, looking at the Government's Exhibit 43, the
25 risk assessment summary, what was the purpose of the loan?

Dietrich - Direct (Bar)

63

1 A (Brief pause.)

2 Financial investment.

3 Q Okay. Were you ever told that the \$5 million from Mr.
4 Levin's unsecured loan was going to be used to purchase Nova
5 Bank stock?

6 A Yeah, I don't remember that conversation.

7 Q Now, do you recall an individual named Anthony Bonomo?

8 A I recall the name. I remember the name.

9 Q And, do you recall whether or not Nova Bank made a loan
10 to Mr. Bonomo in the amount of approximately \$4.5 million?

11 A I do remember seeing the document in an investigation.

12 MS. BARRY: May I please -- I believe it's move into
13 evidence, Government's Exhibit 109.

14 THE WITNESS: Is that --

15 MS. BARRY: And, may it be published to the jury,
16 Your Honor?

17 THE COURT: Yes.

18 BY MS. BARRY:

19 Q Would you like a hard-copy, sir? Would that be easier
20 for you to look at --

21 A It would be easier for me, yeah.

22 Q -- a hard-copy.

23 Q Okay.

24 MS. BARRY: May I approach the witness, Your Honor?

25 THE COURT: Certainly.

Dietrich - Direct (Bar)

64

1 (Brief pause.)

2 BY MS. BARRY:

3 Q And, looking at Government's Exhibit 109, what's the date
4 on this risk assessment summary?

5 A The date is December -- oh, I'm sorry. Excuse me.
6 October 21, 2009.

7 Q And, if we scroll down, please, what is the purpose of
8 the loan?

9 A The purpose is financial investment.

10 Q Okay, and what is the proposed amount of the loan?

11 A Four-point-five-million dollars.

12 Q Okay. Were you ever told by Mr. Hartline or anyone else
13 at the bank that the proceeds -- any of the proceeds from this
14 \$4.5 million loan would be used to purchase Nova Bank stock?

15 A I really don't remember.

16 Q Okay. And, looking at Page 2, --

17 A Page 2?

18 Q -- sir, yes, if you look at Page 2 and look at the
19 transaction --

20 A Mm-hmm.

21 Q -- comments regarding the loan, is there any mention
22 there if the money would be used to purchase Nova Bank stock?

23 A No.

24 Q Okay. And, if we could take, I'm not sure if it's the
25 last page, but the signature page of this document.

Dietrich - Direct (Bar)

65

1 I might -- I believe it's -- yes.

2 And, looking at the signature page, are you one of
3 the three people who signed off on this loan?

4 A That is my signature, yes.

5 Q Okay. And, looking at the other two names that are
6 listed, but there is no signature, could a loan be approved
7 without all five signatures?

8 A I believe they could, depending on the amount of the
9 loan, but I don't recall what the Levins were.

10 Q Now, you -- we -- as far as an individual names Charles
11 Gallub, were you familiar with a loan to him in the amount of
12 \$500,000?

13 A I was not.

14 Q Okay.

15 A No.

16 Q And, I'd like to show you what's been marked as
17 Government's Exhibit 143.

18 MS. BARRY: And, I believe that this has been moved
19 into evidence, and may it be published, Your Honor?

20 THE COURT: Yes.

21 BY MS. BARRY:

22 Q Looking at Government's Exhibit 143, what is the date on
23 this RAS, please?

24 A 12/15/2009.

25 Q And, looking at the contact name on the left-hand side,

Dietrich - Direct (Bar)

66

1 who is listed as the contact name?

2 A Charles Gallub.

3 Q Okay. And, if we scroll down to the loan request, who's
4 the borrower?

5 A Bellmawr Creek, LLC.

6 Q And, what is the purpose of the loan?

7 A Working capital.

8 Q And, what is the proposed amount of the loan?

9 A Five-hundred-thousand.

10 Q And so, were you ever told by Mr. Hartline that this
11 money was going to be used to purchase Nova Bank stock?

12 A I'm -- I'm not aware of that, no.

13 Q Were you aware that the bank had applied for TARP
14 funding?

15 A I was aware that they were going to.

16 Q Okay. And, who told you that?

17 A I think it was discussed with Mr. Hartline in a
18 management meeting.

19 Q Okay. And, what were you told about the TARP funding?

20 A Well, I don't recall the amount we were going for. I do
21 remember that there was a required amount we had to raise in
22 addition to what they were going to provide.

23 Q Okay.

24 A I don't recall the -- the amounts.

25 Q And, were you involved in any raising of any amounts for

Dietrich - Cross (Ega)

67

1 the TARP?

2 A No.

3 MS. BARRY: May I have a moment, Your Honor?

4 MR. EGAN: I'm not sure 143's been admitted, but if
5 Ms. Barry is done with it, perhaps we could take it down?

6 MS. BARRY: Yes, I am.

7 THE COURT: Certainly. It has been.

8 MR. EGAN: My mistake.

9 MS. BARRY: May I have a moment, Your Honor?

10 THE COURT: Yes, ma'am.

11 (Brief pause.)

12 THE COURT: Yes, sir. Could we have some water for
13 the witness, please.

14 (Side comments off the record.)

15 BY MS. BARRY:

16 Q Mr. Dietrich, I just have a quick question.

17 Did you rely on the information on the risk
18 assessment summary or the RAS to approve a loan?

19 A I used that to, yes.

20 Q Okay.

21 A To -- to make the decisions.

22 MS. BARRY: No further questions, thank you.

23 THE COURT: Do you need some more water, sir?

24 THE WITNESS: I have some, thank you. I'm fine,
25 thank you.

Dietrich - Cross (Ega)

68

1 THE COURT: You may cross-examine.

2 MR. EGAN: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. EGAN:

5 Q Good afternoon, Mr. Dietrich.

6 A How are you?

7 Q Good, thank you.

8 Sir, I believe you said you were at Nova Bank from
9 2002 to 2012, correct?

10 A That's what I said, yeah. Did I get the starting date
11 wrong?

12 Q You got me. That's a long time, huh?

13 A Yes.

14 Q So, before that, you had been in banking for a long
15 time, --

16 A Right.

17 Q -- as well, correct? So, you were a very experienced
18 banker.

19 A Correct.

20 Q And, when Brian Hartline hired you, he hired you to do
21 what?

22 A The retail banking component.

23 Q And, the retail --

24 A The branches.

25 Q -- banking component --

Dietrich - Cross (Ega)

69

1 A The branches.

2 Q -- is the branches, correct?

3 A (No verbal response given.)

4 Q And, Nova had several branches, --

5 THE COURT: He has to answer out loud. It's a yes
6 or no.

7 THE WITNESS: Oh, I'm sorry.

8 BY MR. EGAN:

9 Q Nova had several branches?

10 A Yes.

11 Q And, indeed, from 2002 to 2009, at least, they grew
12 branches, correct?

13 A Yes.

14 Q They added a number of branches.

15 A Yes.

16 Q And so, your job was to deal with the day-to-day people
17 who came in and run those various branches.

18 A Correct.

19 Q And, I want to talk a little bit about 2009.

20 Do you recall you were asked about the TARP
21 application, right?

22 A Correct.

23 Q And, you remember that Nova made a TARP application,
24 correct?

25 A Correct.

Dietrich - Cross (Ega)

70

1 Q But, at the time that Nova made the TARP application, it
2 was actually of still attempting to expand, correct?

3 A Yes.

4 Q And, in fact, it had just acquired Pennsylvania Business
5 Bank?

6 A Correct.

7 Q And, it was interested in acquiring an insurance company
8 called DVFG, do you remember that?

9 A Yes.

10 Q And, it was even going to add another branch as a result
11 of that, correct?

12 A Yes.

13 Q And, you were deeply involved in looking into that new
14 branch.

15 A Yes.

16 Q And, you did a lot of work on trying to lay the
17 groundwork so that it could be opened.

18 A Yes.

19 Q So, in 2009, Nova was not, in your view, in any way,
20 shape, or form in -- in jeopardy of failing, correct?

21 A Correct. Yes.

22 Q And, in fact, you stayed until 2012.

23 A Correct.

24 Q And, that was long after these TARP funds were not
25 provided to the bank.

Dietrich - Cross (Ega)

71

1 A Yes.

2 Q Now, because of your senior role in the bank and your
3 experience, you were on the loan committee, correct?

4 A Yes.

5 Q And, I assume that's a responsibility you took very
6 seriously?

7 A Yes.

8 Q And, when a loan was presented to you, you would review
9 whatever was provided to you to make your decisions, correct?

10 A Correct.

11 Q And, that would generally be the RAS, right?

12 A Yes.

13 Q And then, any back-up information that might be provided.

14 A Correct.

15 Q Now, you were asked about collateral for the Levin loan,
16 do you remember that?

17 A (No verbal response given.)

18 Q Whether it was collateralized?

19 A It was unsecured.

20 Q Right. And, collateral can be an important --

21 A Right.

22 Q -- factor, correct?

23 However, it's not the only factor in determining
24 whether to approve a loan, correct?

25 A Correct.

Dietrich - Cross (Ega)

72

1 Q Now, you're familiar with debt service?

2 A Yes.

3 Q And, debt service is a pretty important factor, as well,
4 is it not?

5 A Yes.

6 Q And, that has to do with the amount of cash that the
7 borrower has?

8 A Yes.

9 Q And, the amount of money they have to pay back their
10 debts.

11 A Correct. Yes.

12 Q And, debt service of one was considered sufficient,
13 correct?

14 A Maybe a little over one, but --

15 Q Like, 1.2 or --

16 A One-point-two --

17 Q -- something like that?

18 A -- or something like that, correct.

19 Q But, debt service over three would be considered
20 extremely good, correct?

21 A Correct.

22 Q And, I don't want to bring it back up again, but if we
23 were to look at Mr. Levin's RAS, and you have it.

24 A Mm-hmm.

25 Q In fact, let's do that. Government's 43, please.

Dietrich - Cross (Ega)

73

1 And, if we could have the page with -- if you could
2 blow up the top section of that.

3 Now, sir, that shows the amount of the loan,
4 correct?

5 A Correct.

6 Q And, the date of the RAS, correct?

7 A Correct.

8 Q And, it says it's for \$5 million.

9 A Correct.

10 Q And now, if we could go to Page 2, please.

11 Page 3, pardon me.

12 MR. EGAN: And, if we could blow up those top two
13 sections.

14 BY MR. EGAN:

15 Q Now, the second section, "Financial Analysis," you see
16 that?

17 A Correct.

18 Q So, you were good, 1.2 is what's required, right?

19 A Correct.

20 Q And, Mr. Levin had 3.3-percent.

21 A Yes.

22 Q Now, sir, is that, sort of, the main reason why you
23 approved this loan?

24 A At that time, yes.

25 Q And, when you approved this loan, Brian Hartline didn't

Dietrich - Cross (Ega)

74

1 come to you and say, "You better do this," right?

2 A No.

3 Q He never put any pressure on you to do this.

4 A No.

5 Q You did it of your own judgment, for lack of a better
6 word.

7 A Correct. Yes.

8 Q And, for Mr. Bonomo and Mr. Gallub, to the extent you
9 voted on those loans, it was the same thing, right?

10 A Yes.

11 Q You never received any pressure from anyone to approve
12 any of these loans.

13 A No, I did not.

14 Q Okay. Now, sir, you're familiar with -- if we go back to
15 Page 1, here, at the very top. Thank you.

16 The individual who is the R.M., "R.M.," that means
17 "Relationship Manager," right?

18 A Yes.

19 Q That's a guy by the name of Thomas Patterson, --

20 A Yes.

21 Q -- correct?

22 A Mm-hmm.

23 Q And, that means that he's the person who actually, sort
24 of, started this ball rolling, right, ba -- for lack of a
25 better way of putting it?

Dietrich - Cross (Ega)

75

1 A He would have been the one to pro -- to gather the
2 information and present it to the credit committee for the
3 analysis.

4 Q Okay. Now, you knew Mr. Patterson, correct?

5 A Correct.

6 Q And, he worked at the bank for quite some time, correct?

7 A Correct.

8 Q And, there came a time when he no longer worked the bank,
9 correct?

10 A Yes.

11 Q And, the reason that he no longer worked for the bank was
12 because the bank uncovered some activity that he engaged in
13 that was improper, correct?

14 A Correct.

15 Q And, you were the person who was put in charge of
16 investigating that activity, correct?

17 A Yes.

18 Q And, Mr. Hartline asked you to do that, didn't he?

19 A Yes.

20 Q And, I don't want to get into too much detail, but
21 essentially, Mr. Patterson had basically moved money from
22 places where it belonged to places where it didn't, correct?

23 A Correct.

24 Q And, it -- to the tune of many hundreds of thousands of
25 dollars?

Dietrich - Cross (Ega)

76

1 A Yes.

2 Q And, he had done that without your approval, correct?

3 A Correct.

4 Q He had done that without the bank's approval.

5 A Yes.

6 Q He had done that without Mr. Hartline's approval.

7 A Yes.

8 Q And, you actually confronted him about that, didn't you?

9 MS. BARRY: Objection.

10 THE COURT: Sustained.

11 MR. EGAN: Your Honor, could we see you at sidebar?

12 THE COURT: Surely.

13 MR. EGAN: Thank you.

14 (At sidebar.)

15 MR. EGAN: Thank you. Mr. Dietrich was in charge of
16 running an investigation of Mr. Patterson which ultimately led
17 to his --

18 (Positioning the microphone)

19 THE CLERK: Okay. Sorry.

20 MR. EGAN: It ultimately led to his being brought
21 down on federal charges, and --

22 THE COURT: Excuse me, one second.

23 (Side comments off the record regarding microphone.)

24 MR. EGAN: And, it's important that I be able to
25 develop two facts. One, that Mr. Dietrich interviewed Mr.

Dietrich - Cross (Ega)

77

1 Patterson, and he was not truthful to him. And, two, that Mr.
2 Hartline encouraged Mr. Dietrich to take his information to
3 the federal government because this was at a time in this
4 investigation, after the loan to Levin had taken place, and
5 certainly, the jury could infer that if an individual is
6 willing to send somebody from a bank down to the Feds for an
7 investigation, when he allegedly committed (inaudible) this
8 crime, that's evidence of lack of guilty knowledge.

9 MS. BARRY: Your Honor, this is completely extrinsic
10 evidence. Mr. Patterson is going to be testifying, and to the
11 extent that whatever he did in the investigation is extrinsic
12 to what is relevant here, and it's also hearsay.

13 THE COURT: Okay. Your response?

14 MR. EGAN: I'm only going to ask him if Mr.
15 Patterson was truthful to him about the amount of money that
16 was taken, and then, whether Mr. Hartline supported the
17 decision to go to the government with the facts.

18 MS. BARRY: That's --

19 THE COURT: All right, I will --

20 MS. BARRY: -- completely extrinsic.

21 THE COURT: -- permit -- and, keeping in mind that
22 when he's testifying, to some extent, it's hearsay, even in
23 terms of his extrajudicial statements.

24 It seems to me, first of all, what you're suggesting
25 here is relevant and probative evidence. It is, indeed,

Dietrich - Cross (Ega)

78

1 relevant and probative.

2 But, it has to come in a proper way.

3 Now, if Mr. Patterson, himself, is going to
4 testify, --

5 MS. BARRY: Yes.

6 THE COURT: -- he can testify to what he did. This
7 witness can testify to what he did, and some -- but, without
8 the hearsay, excuse me. Without the hearsay.

9 MR. EGAN: Very well, Your Honor.

10 MS. BARRY: Particularly as to what Mr. Hartline
11 told him to do with Mr. Patterson, because that is completely
12 extrinsic. It's hearsay, and it has no relevance in terms of
13 this particular -- of the issues in this case.

14 MR. EGAN: No, Mr. Hartline --

15 MS. BARRY: It is not against interest. It is for
16 interest. You can't use it that way.

17 MR. EGAN: Right, it could have been against his
18 interest, who knows?

19 THE COURT: Okay. The objection's sustained.

20 MS. BARRY: Thank you, Your Honor.

21 THE COURT: Okay.

22 (End of sidebar.)

23 MR. EGAN: May I proceed, Your Honor?

24 THE COURT: You may proceed.

25 BY MR. EGAN:

Dietrich - Cross (Ega)

79

1 Q So, Mr. Dietrich, this -- the work you did with regard to
2 Mr. Patterson's situation, it took place the year after or in
3 the years after this Levin loan took place, correct?

4 A Yes.

5 Q And, you did whatever work you needed to do, correct?

6 A Yes.

7 Q And, you reported that to bank management?

8 A Yes.

9 Q And, along with bank management, you made the decision to
10 report it to the authorities, correct?

11 A Yeah, well, Mr. Hartline reported it to the authorities,
12 yes.

13 MS. BARRY: Objection.

14 MR. EGAN: No further --

15 THE COURT: Overruled.

16 MR. EGAN: -- questions, Your Honor.

17 THE COURT: Overruled.

18 MR. EGAN: Nothing further.

19 THE COURT: All right. You may proceed.

20 CROSS-EXAMINATION

21 BY MR. DUNCAN:

22 Q Good afternoon, Mr. Dietrich.

23 A Hi.

24 Q Mr. Dietrich, you were first interviewed by the
25 Government about this matter back on August 3, 2012, is that

Dietrich - Cross (Dun)

80

1 correct?

2 A About that time. I don't remember --

3 Q Sure.

4 A -- the date.

5 Q Then, you didn't speak to him for almost three years, and
6 then you spoke to them recently, again, in October of 2015, is
7 that correct?

8 A I believe.

9 Q Sir, you worked at Nova Bank for almost ten years? A
10 little more than ten years?

11 A Yes.

12 Q And, you are very familiar with banking procedures?
13 Banking information? Things about banking?

14 A Probably more on the retail side, yes.

15 Q Sir, you don't -- you don't know very much about -- well,
16 you know that Nova was trying to raise capital pretty much all
17 the time you were there, right?

18 A Yes.

19 Q But, you're not very familiar with the rules on bank
20 capital, are you?

21 A No.

22 Q But, you're an experienced banker, right?

23 A I guess, yes.

24 Q I've read the rules, I don't get them either, so.

25 MS. BARRY: Objection.

Dietrich - Cross (Dun)

81

1 THE COURT: Sustained.

2 MR. DUNCAN: It's -- I'll withdraw, Your Honor.

3 BY MR. DUNCAN:

4 Q Sir, you've met Barry Bekkedam, right?

5 A Yes, sir.

6 Q And, you were basically there at the start when Mr.
7 Bekkedam was there, right?

8 A Yes.

9 Q And, he was on the Board for approximately five years,
10 right?

11 A I don't know the exact length, but --

12 Q At some point, maybe about in the middle of your service,
13 Mr. Bekkedam left the Board?

14 A Correct.

15 Q Okay. And, after that, you didn't have any contact with
16 Mr. Bekkedam, did you?

17 A No, sir.

18 Q We heard a little testimony about the Delaware Valley
19 Financial Group. Do you remember that entity?

20 A Yes.

21 Q In fact, you were involved in doing some of the inter --
22 planned integration of the Delaware Valley Financial Group
23 into Nova, correct?

24 A Correct.

25 Q And, you, in fact, even made a presentation to the Board

Dietrich - Cross (Dun)

82

1 at various times about the Delaware Financial -- Delaware
2 Valley Financial --

3 A I don't recall them, but --

4 Q You'd not be surprised if there was a record that you
5 did.

6 A There might be a record, yes.

7 Q Sure.

8 A I mean, it was part of the retail.

9 Q And, this started to happen in late 2008, correct?

10 A I can't -- I'm not comf -- I don't know the date, but,
11 yes.

12 Q If I said it did, you wouldn't have any reason to
13 disagree with me, --

14 A Okay.

15 Q -- right?

16 And, that would have been before George Levin ever
17 came to the bank for a loan, correct?

18 A (No verbal response given.)

19 Q Because that happened in June of 2009, --

20 A Right.

21 Q -- is that correct?

22 A Correct.

23 Q You know the plan -- part of Nova's plan with the
24 Delaware Valley Financial Group was that they had businesses
25 down in Florida, so Nova was looking to possibly expand into

Dietrich - Cross (Dun)

83

1 Florida, correct?

2 A I don't know that I knew that detail.

3 Q Did you know that Nova was looking to identify a bank
4 down in Florida to help with the DVFG transaction?

5 A I was not aware. I don't recall that conversation.

6 Q It could have happened, you just don't recall it?

7 A I don't recall it.

8 Q Okay, that's fine.

9 Sir, you know that Mr. Bekkedam had a group of
10 clients at Ballamor Capital, correct?

11 A Correct.

12 Q And, you know that Mr. Bekkedam was a customer of Nova
13 Bank, correct?

14 A Yes.

15 Q He was a customer of Nova Bank when he was a Board member
16 at Nova Bank, right?

17 A Yes.

18 Q You'd think it's pretty unusual if a Board member wasn't
19 also a customer of the bank, wouldn't you?

20 A Yes.

21 Q Sir, in fact, all the Board members were customers of
22 Nova Bank, weren't they?

23 A I believe so, yes.

24 Q Ed DiMarcantonio, he was a member of the Board, he was a
25 customer, correct?

Dietrich - Cross (Dun)

84

1 A Right. Correct.

2 Q Wayne Leevy, he was a member of the Board, he was a
3 customer.

4 A Yes.

5 Q Mr. Dennis Marlo, he was a member of the Board, he was a
6 customer?

7 A Yes.

8 Q Okay. All of them were, as far as you know.

9 A Mm-hmm. As far as I know.

10 Q Sir, you took your duties very seriously at Nova Bank,
11 correct?

12 A Correct.

13 Q And, Mr. Bekkedam never called you and tried to exercise
14 any influence or any undue influence in making any of your
15 decisions with regard to banking procedures you were involved
16 with?

17 A No.

18 Q You never gave any special treatment to Mr. Bekkedam, did
19 you, sir?

20 A No.

21 Q And, you never gave any special treatment to any of Mr.
22 Bekkedam's clients, did you?

23 A No. No.

24 MR. DUNCAN: Thank you, Your Honor. I have no
25 further questions.

Dietrich - Redirect (Bar)

85

1 Thank you, Mr. Dietrich.

2 (Brief pause.)

3 REDIRECT EXAMINATION

4 BY MS. BARRY:

5 Q You were asked questions by both defense counsel about
6 this alleged investment or acquisition of DVFG?

7 A Yes.

8 Q Okay. Did Nova Bank ever acquire DVFG?

9 A Pardon?

10 Q Did Nova Bank ever acquire DVFG?

11 A No.

12 Q You were asked about the new branch that you were looking
13 into.

14 Was the new branch ever opened?

15 A No.

16 Q You were -- well, let me ask you this.

17 Do you know if Mr. Levin ever paid his \$5-million
18 loan back?

19 A I don't believe so. I don't believe he did.

20 MS. BARRY: May I have a moment, Your Honor?

21 THE COURT: Yes.

22 MS. BARRY: No further questions, thank you.

23 MR. EGAN: No questions, Your Honor.

24 MR. DUNCAN: No questions, Your Honor.

25 THE COURT: Thank you, sir, you may step down.

Dietrich - Redirect (Bar)

86

1 Watch your step, please.

2 All right, we will recess until 1:30 this afternoon,
3 1:30 this afternoon. Thank you.

4 DEPUTY: All rise.

5 (Whereupon the jury exits the courtroom.)

6 (Proceedings adjourned at 12:17 p.m.)

7 (Luncheon recess.)

8 (Proceedings continued at 1:46 p.m.)

9 DEPUTY: All rise.

10 (Whereupon the jury enters the courtroom.)

11 THE CLERK: Ladies and gentlemen, we are back on the
12 record.

13 THE COURT: Good afternoon, you may be seated. Is
14 it warm to you?

15 THE CLERK: It's great.

16 THE COURT: Okay.

17 (Side comments off the record.)

18 THE COURT: Okay. Counsel, you may proceed.

19 MR. IGNALL: The Government calls George Levin.

20 (Brief pause.)

21 G E O R G E L E V I N, GOVERNMENT WITNESS, SWORN.

22 THE CLERK: Please state and spell your name into
23 the record, and you can have a seat.

24 THE WITNESS: George Levin, L-E-V-I-N.

25 THE COURT: You may proceed.

Levin - Direct (Ign)

87

1 MR. IGNALL: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. IGNALL:

4 Q Mr. Levin, from what city and state are you originally
5 from?

6 A Right here in Philadelphia.

7 Q Did you move away from Philadelphia at any point?

8 A Yes.

9 Q And, when did you move away?

10 A Some time in the late 70's.

11 Q And, where did you move to?

12 A Florida.

13 Q All right. And, what -- were you involved in any
14 businesses while you were in Florida?

15 A Yes.

16 Q What businesses were you involved in?

17 A Quite a few. Real estate and active businesses.

18 Q What was the last part? Active business?

19 A Active businesses, yeah.

20 Q Like, what kind of businesses did you have?

21 Did -- are these businesses you owned or had a --

22 A Yes.

23 Q Okay.

24 A I did.

25 Q And, what types of businesses did you own?

Levin - Direct (Ign)

88

1 A A mobile home park in New York, a hotel in Palm Beach, a
2 hotel in Atlantic City.

3 Active businesses, real estate businesses, mostly.

4 Q Let me turn your attention to about 2007, were you still
5 living in Florida?

6 A Yes.

7 Q And, were you involved in the types of businesses we just
8 talked about in 2007?

9 A Yes.

10 Q And, not to get too personal, had you accumulated a
11 significant amount of wealth at that point?

12 A Yes.

13 Q All right. And, did you have any wealth that was liquid
14 or available for you to invest or spend?

15 A Yes.

16 Q All right. Do you remember roughly how much you might
17 have had around 2007 that was available to invest or spend?

18 A Asset-wise? Not all liquid or so forth? Over 200
19 million.

20 Q All right, how about liquid?

21 A Liquid? Probably 40, 50 million.

22 Q All right. In or around 2007, do you recall whether you
23 met someone named Scott Rothstein?

24 A Yes.

25 Q And, how did you meet Mr. Rothstein?

Levin - Direct (Ign)

89

1 A He was an attorney in Fort Lauderdale that was introduced
2 to me, and he called me one day and asked me if I would like
3 to go -- if I could go with him to see a company he
4 represented on the west coast of Florida, a public company.

5 Q All right, and did you go on that trip with Mr.
6 Rothstein?

7 A Yes, I did.

8 Q All right. And, without going into the details of that
9 investment, at the end of that trip, did Mr. Rothstein suggest
10 any other type of investment to you?

11 A Yes.

12 Q And, just generally, what was that investment?

13 A That was investment in some -- buying legal settlements
14 that he had for clients that he represented.

15 Q And, how is it that you were going to make money on that?

16 A It was similar to, I guess, the best way I can explain it
17 is if you win the lottery, and you want to take cash today,
18 where these payments were due out over a period of time, and
19 the individuals who had them would like to get cash for them
20 up front.

21 Q And, --

22 A Immediately.

23 Q And, if you invested, what role would you play in that?

24 A We would supply the funds.

25 Q Did you speak to anyone who worked with you about whether

Levin - Direct (Ign)

90

1 to invest in what Mr. Rothstein was proposing?

2 A Many people.

3 Q Okay. Was there anyone in particular who worked for you
4 to provide financial advice to you around that time?

5 A Well, I had my in-house right-hand CEO, would be Frank
6 Preve, and then I had a good relationship with our bankers.

7 Q All right. What was Mr. Preve's role with respect to you
8 and your companies?

9 A He was my right-hand.

10 Q Did you rely on him at any time to take care of financial
11 matters for you?

12 A All the time.

13 Q Did you and Mr. Preve get involved in setting up any kind
14 of an entity through which to invest with Mr. Rothstein?

15 A Yes.

16 Q And, do you remember the name of that first entity?

17 A Banyon Investments.

18 Q Okay. And, starting in 2007, did you invest any money
19 with Mr. Rothstein?

20 A Yes.

21 Q And, through about 2007, do you recall how much you
22 personally invested?

23 A That was in the beginning. I imagine it was somewhere in
24 the neighborhood of 20 million.

25 Q All right. And, what type of return were you hoping to

Levin - Direct (Ign)

91

1 get on that money?

2 A Somewhere in excess of 20-percent.

3 Q All right.

4 A Thirty-percent.

5 Q At some point, did you open up this investment to other
6 people beside yourself?

7 A The business kept growing, and it got to a point where it
8 opened it up to family and friends.

9 Q And, --

10 A Initially.

11 Q And, for family and friends who invested, what was your
12 role in that?

13 A Well, I guaranteed their investments and --

14 Q And, what do you mean by "guaranteed their investments?"

15 A I personally guaranteed their investment.

16 Q So, what does that mean?

17 A That means if anything went wrong, I would pay them.

18 Q All right, and did you pay them a set percent return?

19 A Yes. They were not inve -- they invested in Banyon, but
20 they got a fixed return.

21 Q And, where did the funds from Banyon go?

22 A Into Rothstein's --

23 Q All right.

24 A -- investments.

25 Q And, were you hoping to get a higher return than what you

Levin - Direct (Ign)

92

1 were paying the people who invested with you?

2 A Oh, yes.

3 Q But, if something was not favorable with Mr. Rothstein's
4 investment, what did that mean for you that you guaranteed the
5 friends and family?

6 A I would pay them back out of my assets.

7 Q What -- going forward, once you opened this up to friends
8 and family, did you ever open up investment in this Banyon
9 entity or something related to people beyond friends and
10 family?

11 A Yes, it got to a point where we brought in some funds out
12 of New York, and -- to invest.

13 Q And, how was that investment set up?

14 A It was set up whereby they also got a fixed rate of
15 return.

16 Q And, did you provide any kind of guarantee?

17 A Yes.

18 Q All right, and again, if something went wrong with the
19 Rothstein investment, what did that mean for you with respect
20 to these funds in New York?

21 A A big problem.

22 Q But, what -- what kind of problem do you mean?

23 A Having to pay it all back.

24 Q Did you have any role with respect to Mr. Rothstein in
25 terms of finding funding for these settlements?

Levin - Direct (Ign)

93

1 A Yes.

2 Q What was your role?

3 A We were actually out getting money to invest for
4 Rothstein.

5 Q And, did Mr. Rothstein say whether he had significant
6 needs for funding for these settlements?

7 A He said he had expanded his business in a big way, and
8 depending upon us funding him.

9 Q Have you ever met someone named Barry Bekkedam?

10 A Oh, yes, yes.

11 Q And, when did you first meet Mr. Bekkedam?

12 A Oh, I met Mr. Bekkedam sometime in 2009. I think the
13 beginning of the year.

14 Q And, how did you meet Mr. Bekkedam?

15 A Through another associate that we both knew.

16 Q And, who was that?

17 A Howard Gruverman.

18 Q And, do you see Mr. Bekkedam anywhere here in the
19 courtroom?

20 A Oh, yes. Right here.

21 Q Can you identify him by where he's sitting and what he's
22 wearing?

23 A He's second from the end there in a suit.

24 Q Okay.

25 A I guess.

Levin - Direct (Ign)

94

1 MR. IGNALL: May the record reflect that the witness
2 has identified Defendant, Mr. Bekkedam.

3 THE COURT: The record shall so reflect.

4 BY MR. IGNALL:

5 Q And, do you know what business Mr. Bekkedam was in when
6 you first met him?

7 A Investment banking, I believe.

8 Q Do you know if he had a business that he owned or ran?

9 A Yes. Ballamor Capital.

10 Q And, do you know what kind of business that was?

11 A An investment firm.

12 Q All right. Did Mr. Bekkedam ever talk to you about
13 whether you could become a client of Ballamor?

14 A Oh, yes.

15 Q And, what did he ask you or say?

16 A I don't recall. That's how first met. I think that was
17 what it was about. He wanted me to become a client of
18 Ballamor.

19 Q And, did you become a client of Ballamor?

20 A I don't think I ever did, no.

21 Q All right. Did Mr. Bekkedam ever describe what his firm
22 did?

23 A Yes.

24 Q And, what did he tell you his firm did?

25 A Made investments. And, he had the authority to make

Levin - Direct (Ign)

95

1 investments in different --

2 Q Authority --

3 A -- companies.

4 Q -- on behalf of whom?

5 A His investors.

6 Q And, did he tell you how much money he had from
7 investors?

8 A Substantial.

9 Q Did he tell you -- give you a number?

10 A I don't recall, but I think it was about, you know, a
11 billion, something like that.

12 Q Did you at any point discuss the Rothstein settlements
13 with Mr. Bekkedam?

14 A Oh, yes.

15 Q And, what discussions did you have with Mr. Bekkedam
16 about them?

17 A Eventually, he invested with us.

18 Q Well, what -- did you discuss what the settlements were
19 with him?

20 A Yes. Of course.

21 Q And, you said, when "he invested with us."

22 What do you mean by that?

23 A He raised funds to invest with us.

24 Q And, do you know from whom he was raising funds?

25 A At the time, I beli -- they were his clients.

Levin - Direct (Ign)

96

1 Q Did Mr. Bekkedam ever tell you if he's be able to raise
2 funds for these settlements?

3 A Yes.

4 Q Did he say how much the thought he could raise?

5 A Yes.

6 Q And, what did he tell you?

7 A I think it was a couple hundred million. I think
8 something like that.

9 Q Did you set up any particular entity to work with Mr.
10 Bekkedam on funding these settlements?

11 A Eventually, we did, yes.

12 Q And, what was the name of that entity?

13 A I don't recall.

14 Q Did -- do you know if it had the word, "Banyon," in the
15 name?

16 A Probably.

17 Q Have you ever heard of something called the Banyon Income
18 Fund?

19 A Yes.

20 Q And, what is that?

21 A That's the fund.

22 Q All right. Do you remember roughly when you set that up?

23 A Sometime in 2009.

24 Q All right. And, with respect to this Banyon Income Fund,
25 did you have any role in guaranteeing investments?

Levin - Direct (Ign)

97

1 A I think I did.

2 Q Did Mr. Bekkedam talk to you about having you guarantee
3 investments?

4 A Yes.

5 Q And, did he ask you whether -- did he ask you to do that?

6 A Yes.

7 Q All right. And, what did it mean that you guaranteed the
8 investments?

9 A We guaranteed the funds that were coming in.

10 Q And, were you paying a fixed return, or how were inve --

11 A A fixed return, yes.

12 Q And, what does a "fixed return" mean?

13 A A fixed return is a set percentage --

14 Q Okay.

15 A -- on the investment dollars.

16 Q Did you around the same that you were setting up the
17 Banyon Income Fund have any other business deals with Mr.
18 Bekkedam?

19 A Yes.

20 Q All right, and if I could turn your attention to Exhibit
21 14?

22 MR. IGNALL: Is that -- has that been admitted? All
23 right.

24 All right, I believe this has been admitted. And, I
25 can -- now, I can approach with a hand-copy, Your Honor? May

Levin - Direct (Ign)

98

1 I?

2 THE COURT: All right. Yes, sir.

3 BY MR. IGNALL:

4 Q You can look at the screen, Mr. Levin, or I can hand you
5 a hard copy.

6 A Thank you.

7 The screen's easier.

8 Q Okay. Does this e-mail -- who's this e-mail from?

9 A It's from Barry.

10 Q And, who's it to?

11 A Frank Preve.

12 Q And, is anyone copied on this?

13 A I am.

14 Q Okay. Is that your e-mail address?

15 A Yes.

16 Q And, was that the address you were using in 2009?

17 A Yes.

18 Q All right. Looking at this, does Mr. Bekkedam talk about
19 any other business deals you had together around April of
20 2009?

21 A In the --

22 Q It might be easier if you look at the hard-copy just --
23 just for --

24 A Yes.

25 Q What deals did you have, just generally, with Mr.

Levin - Direct (Ign)

99

1 Bekkedam then?

2 A This was a bond investment that Barry was involved in
3 whereby --

4 Q Go ahead.

5 A -- he wanted to become liquid from the investment.

6 So, I believe we had made an arrangement that I was
7 going to buy for cash his portion of it. He had a loan with
8 the bank.

9 Q What bank? Do you know?

10 A I'm trying to think. It's --

11 (Brief pause.)

12 Q Well, I might be able to show you some documents.

13 A Mr. Hartline's bank, I'm not sure.

14 Q Does the name, "Nova Bank," sound familiar?

15 A "Nova," I'm sorry, yes.

16 Q All right. And, were you going to do anything with
17 respect to the loan that Mr. Bekkedam had from Nova Bank?

18 A Nova was supposed to transfer the loan to us. To me.

19 Q Did that ever happen?

20 A No.

21 Q All right. Did you provide any information to Nova Bank
22 to try to assume that loan?

23 A I'm sure I did.

24 Q All right.

25 A I'm sure my people did.

Levin - Direct (Ign)

100

1 Q All right. And, when you say, your "people," who would
2 that include?

3 A That would be Frank.

4 Q All right. And, looking at Exhibit 14, did you have any
5 other business deals with Mr. Bekkedam around this April 2009
6 time period?

7 A This was in the, I think, the investment in the bank.

8 Q Well, is it -- did you -- look at Item number 2.

9 A Mm-hmm.

10 Q Did you talk with Mr. Bekkedam at all about you investing
11 in some way in Ballamor Capital?

12 A It's possible, yes.

13 Q All right. Did you agree to provide any funding to Mr.
14 Bekkedam with respect to Ballamor Capital?

15 A I don't know if we did, but we never -- if we came to
16 agreement or not, we never invested.

17 Q Did Mr. Bekkedam ever ask you to invest in Ballamor
18 Capital?

19 A I don't recall.

20 Q Did you ever talk to Mr. Bekkedam about Nova Bank?

21 A Yes.

22 Q Do you know what role, if any, Mr. Bekkedam had at Nova
23 Bank?

24 A At the time, no, I did not.

25 Q Did he say what his role was at Nova Bank at any time?

Levin - Direct (Ign)

101

1 A An advisor.

2 Q All right.

3 A I think he said he was on the Board at one point, but --

4 Q Did you ever have any discussions with Mr. Bekkedam about
5 investing in a bank in general?

6 A Yes.

7 Q What were those discussions?

8 A It was Nova Bank, and he was going to do certain things
9 with it. There was a TARP loan.

10 Q Let me stop --

11 A Oh.

12 Q -- you.

13 Did you have any discussions with Mr. Bekkedam about
14 purchasing a bank other than Nova Bank?

15 A No.

16 Q All right. Did you have any interest in purchasing a
17 bank in general?

18 A At the time?

19 Q Yeah.

20 A No.

21 Q Were you interested at all in finding a place for the
22 settlement funds to be invested?

23 A Made since, yeah.

24 Q Okay. And, we mentioned Nova Bank.

25 Who first mentioned Nova Bank as a possible

Levin - Direct (Ign)

102

1 investment for you?

2 A Well, it had to be Barry because I didn't know Nova Bank
3 before then.

4 Q Okay. Did Mr. Bekkedam tell you whether any of his
5 clients had any involvement with Nova Bank?

6 A I don't recall. No.

7 Q Do you know if he ever talked to you about whether anyone
8 in -- any Ballamor client had ever invested in Nova?

9 MR. EGAN: Objection. Leading.

10 THE COURT: Sustained.

11 BY MR. IGNALL:

12 Q Do you recall any discussions with Mr. Bekkedam about
13 Ballamor clients in general?

14 A Yes.

15 Q Do you recall a discussion about whether any Ballamor
16 client was invested in Nova Bank?

17 A I don't recall.

18 Q Okay. With respect to Nova Bank, did Mr. Bekkedam seek
19 an investment from you?

20 A Yes.

21 Q All right. What did he tell you about Nova Bank?

22 A That I think they had a TARP loan.

23 Q Do you know what -- did you know what that was at the
24 time?

25 A Yes.

Levin - Direct (Ign)

103

1 Q What was that?

2 A That was the government was lending banks money be --
3 during that period of time, 2008 was a tough time.

4 Q All right. What else did he tell you about Nova Bank?

5 A That Nova was about to take over a company, I think, in
6 Conshohocken, if I recall.

7 And, I think it might have been an insurance
8 company, might have been another bank. I don't recall what it
9 was.

10 And that there were great things on horizon for the
11 bank.

12 Q Did he tell you if the bank needed to do anything in
13 order to get this TARP funding from the government?

14 A They needed to raise some funds.

15 Q All right. Now, did Mr. Bekkedam tell you what the bank
16 was going to do if it got this TARP funding?

17 A It was going to do -- go ahead and do this. I think they
18 were even going to do something in Florida, take over some
19 banks.

20 Q Did you ask anyone who worked with you to look into
21 investing in Nova Bank?

22 A Yes.

23 Q Who'd you ask to look into it?

24 A Frank Preve. I was -- I wasn't there at the time, I had
25 moved to Saint Thomas.

Levin - Direct (Ign)

104

1 Q All right. You mentioned a minute ago that Mr. Bekkedam
2 said the bank needed to raise capital to get the TARP. Did
3 Mr. Bekkedam ever tell you if he had been raising capital from
4 other people?

5 A Yes.

6 Q What did he tell you?

7 A That he had other investors.

8 Q Did you tell Mr. Bekkedam that you had any interest in
9 making an investment in Nova Bank?

10 A I think in -- along the lines of the capital that we were
11 handling at the time, it made sense.

12 Q Did you tell him whether getting the TARP made any
13 difference to you?

14 MR. EGAN: Objection, leading.

15 THE COURT: Sustained.

16 BY MR. IGNALL:

17 Q Do you recall any discussions with Mr. Bekkedam about the
18 effect of the TARP on your willingness to invest?

19 A It was an important factor.

20 Q And did you tell Mr. Bekkedam that?

21 A I'm sure I did.

22 Q And why was that important to you?

23 A Gave the bank the capital it needed to do the things he
24 wanted to do.

25 Q Did you -- you have any discussion with -- I withdraw

Levin - Direct (Ign)

105

1 that.

2 Did you have any discussion with Mr. Bekkedam about
3 how much he wanted you to invest in Nova Bank?

4 A Yes.

5 Q And do you remember how much that was?

6 A Initially, I think it was somewhere around 12, 15
7 million, something like that.

8 Q All right. And was there an amount of money you were
9 going to put up initially as part of that larger amount?

10 A Yes.

11 Q And do you remember how much that was?

12 A Five million.

13 Q All right. Did you have discussion with Mr. Bekkedam
14 about what the source of that \$5 million would be?

15 A Well, it was very plain amongst all of us that --

16 Q Well, who's included in "all of us?"

17 A Would be myself, would be Frank, would be any of my
18 people.

19 Q Okay.

20 A That I wanted to keep all the cash we possibly could in
21 the investment with Rothstein.

22 Q And did you tell that to Mr. Bekkedam?

23 A Yes.

24 Q And did Mr. Bekkedam come up with a suggestion?

25 A Yes.

Levin - Direct (Ign)

106

1 Q What was that suggestion?

2 A That the bank would lend us the five million.

3 Q For what purpose?

4 A To replace the five million we're going to invest.

5 Q And did you ever have any discussion with Mr. Hartline
6 about that?

7 A Initially?

8 Q At any point prior to the loan?

9 A I'm not sure I did.

10 Q As of June 30, had you -- let me ask it differently.

11 Did you at some point apply for a loan from Nova
12 Bank?

13 A Yes.

14 Q And do you remember roughly when that was?

15 A I think it's around that date, around June somewhere.

16 Q Did Mr. Bekkedam ever have any discussion with you about
17 any meeting to the June 30 date?

18 A I don't recall.

19 Q Was it -- do you recall if there was any urgency to get
20 this done?

21 MR. EGAN: Objection.

22 MR. DUNCAN: Objection.

23 THE COURT: Sustained.

24 BY MR. IGNALL:

25 Q With respect to the specifics, in terms of getting this

Levin - Direct (Ign)

107

1 loan applied for, did you handle that, or did you have anyone
2 else handle that on your behalf?

3 A Frank handled the whole thing.

4 Q So, did you at some point apply for a loan from Nova Bank
5 in June of 2009?

6 A Yes.

7 MR. IGNALL: All right. I'd like to show you what
8 we've marked as Exhibit 301. I believe by stipulation I'm
9 going to move this into evidence right now.

10 MR. DUNCAN: No objection.

11 MR. EGAN: No objection.

12 MR. IGNALL: And the easiest thing might be, if
13 you're looking on your screen -- and I could turn your
14 attention to the -- the page, then, is 017, Agent Boyer. It's
15 probably -- probably about the 28th page, if my math is right.

16 (Brief pause.)

17 MR. IGNALL: All right. If we could maybe publish
18 this to the jury, Your Honor?

19 THE COURT: Any objection?

20 MR. EGAN: No objection.

21 MR. DUNCAN: No objection, Your Honor.

22 THE COURT: Granted.

23 MR. IGNALL: All right, why don't you put the whole
24 page on the screen, please, Agent Boyer, for now?

25 BY MR. IGNALL:

Levin - Direct (Ign)

108

1 Q Looking at this, Mr. Levin, do you recognize this
2 document at all?

3 A Could you blow it up again, please? Yes.

4 Q And what is this?

5 A This would be the loan document for the 500 -- five
6 million.

7 Q All right. And if we can go all the way down to the
8 bottom, do you see a signature there?

9 A Yes.

10 Q Do you recognize that signature?

11 A Yes.

12 Q Whose signature is that?

13 A That's mine.

14 Q Do you know who prepared this document?

15 A No.

16 Q All right. Did you sign a number of documents?

17 A Yes.

18 Q All right. And, do you remember who gave them to you to
19 sign?

20 A Probably Frank.

21 Q Let me turn your attention three pages earlier. Well --
22 yes, should end in 14.

23 It says, "Nova Bank Commercial Loan Application."

24 A Okay.

25 Q You see that?

Levin - Direct (Ign)

109

- 1 A Yes.
- 2 Q And is that your name at the top?
- 3 A Yes.
- 4 Q And what city and state were you living in then?
- 5 A Florida.
- 6 Q And what city were you living in?
- 7 A Fort Lauderdale.
- 8 Q All right. And the business phone there, do you
- 9 recognize that phone number?
- 10 A That would have been the -- yeah, the business. That
- 11 would have been Banyon's.
- 12 Q All right. Did you fill out this form?
- 13 A No.
- 14 Q You see a signature at the bottom?
- 15 A Yes.
- 16 Q Is that your signature?
- 17 A No.
- 18 Q When you borrowed the \$5 million in June, do you know
- 19 where that money went?
- 20 A Exactly where it went?
- 21 Q Well, let me ask it differently. Were you involved in
- 22 either receiving -- were you involved in determining where
- 23 that money went when it left the bank?
- 24 A No.
- 25 Q Who was involved in that?

Levin - Direct (Ign)

110

1 A Frank.

2 Q And were you involved in directing where the money should
3 go after it was distributed from the bank?

4 A No.

5 Q Who was involved in that?

6 A Frank.

7 Q All right. Was there any purpose for this loan, other
8 than to invest in Nova Bank?

9 A It was the capital itself, as I said, from before. We
10 never wanted to deplete the amount of monies we were investing
11 with Rothstein.

12 So, therefore, we made the loan to make -- to invest
13 in the bank.

14 Q Do you recall if there was any requirement for you to get
15 approved by a regulatory agency, either in the state or
16 federal government, with respect to Nova Bank?

17 A Yes.

18 Q What was your understanding?

19 A Because we would have wound up owning over five or
20 ten-percent of the bank. We had to be approved for that
21 investment.

22 Q And did you prepare any paperwork to send to the state or
23 federal government?

24 A Frank did all that, he took care of that.

25 Q All right. If I could turn your attention to Exhibit 55.

Levin - Direct (Ign)

111

1 Do you recognize Exhibit 55?

2 A Yes.

3 Q And what is Exhibit 55?

4 A That was the application to the authorities --

5 Q All right.

6 A -- to get approval to make the investment.

7 Q Did you draft this yourself?

8 A No.

9 Q Do you know who drafted it?

10 A I don't.

11 Q Is that your signature at the bottom?

12 A Yes, it is.

13 Q All right. Do you know whether or not you ever got a
14 version of this document without your signature?

15 A I don't --

16 Q Or, phrased differently, it -- you said that's your
17 signature. Did someone else provide this document to you
18 without a signature on it?

19 MR. EGAN: Objection.

20 THE COURT: Overruled.

21 THE WITNESS: I don't recall.

22 BY MR. IGNALL:

23 Q Okay. After June, did you have an opportunity to review
24 any financial information regarding Nova Bank?

25 A Yes.

Levin - Direct (Ign)

112

1 Q And based on that review of financial information, what
2 was your view about investing any money into Nova Bank, that
3 18 million or whatever number it was?

4 A Well, I think you need to know that at the same time I
5 was, as I said, going to Saint -- moved to Saint Thomas to
6 establish residency there, and open Banyon in Saint Thomas for
7 tax planning purposes.

8 And I left it up to Frank, since he was an ex-banker
9 back way when, to vet the investment and take a look at it.

10 And --

11 Q Mr. Levin, not to cut you off, my question was at some
12 point --

13 A I'm sorry.

14 Q -- did you -- did you look at the financials?

15 A Eventually, yes.

16 Q And what effect did that have on your desire to invest
17 any more money in the bank?

18 A I didn't want to.

19 Q All right. Did you have any concerns at the time about
20 the price of the stock that you paid?

21 MR. EGAN: Objection, leading.

22 THE COURT: Overruled.

23 THE WITNESS: Yes.

24 BY MR. IGNALL:

25 Q And did you discuss those with anyone at the bank?

Levin - Direct (Ign)

113

1 A Mr. Hartline, yes.

2 Q And in person, on the phone, how did you -- how did you
3 have the discussion?

4 A On the phone.

5 Q And how many times do you recall speaking to Mr. Hartline
6 on the phone?

7 A Quite a few.

8 Q And what were the -- what's the gist of your
9 conversations with Mr. Hartline?

10 A That the way that the transaction had been structured and
11 executed was not fair and equitable, in that we didn't have
12 a -- a lockup on -- or, an anti-dilution clause in the
13 documents, and they were out selling more stock on top of us.

14 The interest -- the interest rate on the loan
15 itself, the \$5 million loan, and there were quite a few things
16 like that.

17 Q And did you raise with Mr. Hartline your concerns about
18 investing any more money with Nova as it was structured?

19 A I don't think we got in -- I didn't get into that
20 conversation with him.

21 Q With respect to the state and federal regulators, do you
22 recall whether you got any questions from them?

23 A I'm sure we did.

24 Q All right, if I could turn your attention to Exhibit 74.
25 And I believe this is in evidence.

Levin - Direct (Ign)

114

1 MR. IGNALL: May I publish this to the jury, Your
2 Honor?

3 THE COURT: Any objection?

4 MR. EGAN: No, Your Honor.

5 MR. DUNCAN: No objection.

6 THE COURT: Granted.

7 (Side comments off the record.)

8 BY MR. IGNALL:

9 Q And if I could ask you to look at Exhibit 74, do you
10 recognize this document?

11 A Yes.

12 Q And what is this document?

13 A It's an e-mail from me to Frank Preve, and to Barry.

14 Q All right. And if we go down to the bottom e-mail, do
15 you see that?

16 Was it -- do you recall getting this bottom e-mail
17 as part of the string we just looked at?

18 A (No verbal response given.)

19 MR. IGNALL: May I approach with a hard copy, Your
20 Honor?

21 THE COURT: Yes, you may.

22 MR. IGNALL: It might be easier if you look at
23 the -- all the e-mails --

24 THE WITNESS: Okay.

25 MR. IGNALL: -- together in the hard copy.

Levin - Direct (Ign)

115

1 THE WITNESS: Thank you.

2 (Brief pause.)

3 THE WITNESS: Yes.

4 BY MR. IGNALL:

5 Q Do you recall, at this point, whether anyone had asked
6 you to provide information to either the state or federal
7 government in connection with Nova Bank?

8 A I'm sure they did, yes.

9 Q And read item number two. What is Ms. Metcalfe asking in
10 item number two?

11 A The source of funds -- do you want me to read it, or
12 just --

13 Q Well, just read the first line. What does it say?

14 A "Source of funds to be used to purchase the stock."

15 Q All right. And if we go back to the top e-mail, what's
16 the subject line there?

17 A Want me to read it?

18 Q Yes.

19 A "Barry."

20 Q No, what does the subject line say?

21 A Oh, subject line says, "Fed Follow-up Questions."

22 Q All right. And did you -- after you got this -- these
23 questions from the Fed, did you e-mail Mr. Bekkedam?

24 A Yes.

25 Q And what did you tell Mr. Bekkedam?

Levin - Direct (Ign)

116

1 A I wasn't happy about all this going on, to make this
2 investment. Because by this time, as I said prior, I was not
3 happy with it.

4 Q And what did you tell Mr. Bekkedam, can you read that?

5 A That I was going through with it simply because --

6 Q Well, can you read it? What does it say?

7 A Oh, I'm sorry.

8 "Barry, why am I involved in all this? I am trying
9 to help you out. I could care less about this investment."

10 Q What do you mean you're trying to help him out?

11 A Well, with the bank. Yeah, raising funds for the bank,
12 and so forth.

13 Q (Brief pause.)

14 Now, after this -- this was August 25 -- what's the
15 date of this e-mail? I'm sorry.

16 A August 25th.

17 Q All right. After August 25th, did you have any intent to
18 put any money into Nova Bank?

19 MR. EGAN: Objection.

20 THE COURT: Sustained.

21 MR. IGNALL: May I ask for the basis, so I can --

22 MR. DUNCAN: Leading, Judge.

23 BY MR. IGNALL:

24 Q After -- as of August 25th, had you decided one way or
25 another what you thought about further investment in Nova

Levin - Direct (Ign)

117

1 Bank?

2 A I'm not sure it even came up at this point.

3 Q All right. As of August 25, 2009, did you have any other
4 business deals going with Mr. Bekkedam?

5 A We had the unfinished deal on the bonds, where --

6 Q All right.

7 A -- we had sent him the money.

8 Q What about the Banyon Income Fund, was that still
9 ongoing?

10 A Yes.

11 Q At this point, do you recall any discussions with Mr
12 Bekkedam about the TARP funding?

13 And maybe I can help, let me -- let me show you what
14 we've marked as Exhibit 80, and I do not believe this is in
15 evidence yet.

16 (Brief pause.)

17 BY MR. IGNALL:

18 Q Just from looking at the top, what is Exhibit 80?

19 A It's from Barry Bekkedam to me, with a carbon copy to
20 Larry Rovin.

21 Q And what's the date of this e-mail?

22 A Thursday, September 3, 2009.

23 Q And what's the subject line?

24 A "Miscellaneous To-Dos."

25 Q And is that your e-mail address in the "To" line?

Levin - Direct (Ign)

118

1 A Yes.

2 MR. IGNALL: All right. The Government moves into
3 evidence Exhibit 80.

4 MR. EGAN: No objection.

5 MR. DUNCAN: No objection.

6 THE COURT: Granted.

7 MR. IGNALL: May I publish to the jury?

8 THE COURT: Yes, you may.

9 BY MR. IGNALL:

10 Q All right. Does this e-mail discuss more than one topic?

11 A (No verbal response given.)

12 MR. IGNALL: Again, Your Honor, may I approach with
13 a hard copy? That might be easier.

14 THE COURT: Yes, sir.

15 MR. IGNALL: Take a look. I'll direct you to
16 something in particular momentarily.

17 THE WITNESS: Okay.

18 BY MR. IGNALL:

19 Q Mr. Bekkedam describe -- discussed more than one topic in
20 this e-mail?

21 A It seems to be, yes.

22 Q All right.

23 Let me turn your attention to the bottom of the
24 page, where it starts with, "Lastly, Nova Bank."

25 A Yes?

Levin - Direct (Ign)

119

1 Q What does Mr. Bekkedam say right there?

2 A Want me to read that aloud?

3 Q Yes, please.

4 A "Lastly, Nova Bank needs you to respond to a couple of
5 questions for the state regulatory approval by next week, or
6 we are in difficult position.

7 "We have been approved for low-cost TARP of 13
8 million, which enhances the projections for the bank. We are
9 forming the Florida bank holding company, and have identified
10 three prospective banks.

11 "The end result, as discussed, is" --

12 Q All right, and let's -- we can scroll down, what are one
13 and two for the end result?

14 A "One, George Levin has no cash in by mid-2010, as lending
15 limits from the bank continues to increase replacing invested
16 capital.

17 "Two, equity valuable is enhanced by Florida, low
18 cost of capital currently housed entirely at TD."

19 Q All right. And let's go -- did he -- what does he say
20 next?

21 A "What we need as soon as possible" -- "ASAP" --

22 Q And what -- what is that, if we go to the next page?

23 MR. IGNALL: Let's see if we can -- Agent Boyer will
24 blow that up for us.

25 THE WITNESS: Okay.

Levin - Direct (Ign)

120

1 BY MR. IGNALL:

2 Q What does that say?

3 A "Details about the lawsuit George's company was involved
4 in many years ago, and his involvement.

5 "The disclosure that we put in the PPM of Banyon
6 Income Fund, as well as some other information, will be passed
7 on to Brian Hartline to accomplish this request.

8 "It may have to actually be sent to them from Frank.

9 "Two" --

10 Q And what does item two say?

11 A "Two, they asked where the potential money would come
12 from. They asked to see the bank statement, if it was coming
13 from cash.

14 "They asked to see what assets would be liquidated,
15 if needed, from the balance sheet."

16 Want me to continue?

17 Q No.

18 A Okay.

19 Q Thank you. What's the next line say? I'm sorry.

20 A "I can't do anything without getting state approval
21 first. I need this information yesterday. We will reconvene
22 together for me to walk you through specific timing, IRR
23 projections, impact of deposits, et cetera, next week, or the
24 follow week.

25 "All the best, let's keep going, B."

Levin - Direct (Ign)

121

1 Q Did you ever tell Mr. Bekkedam you would liquidate assets
2 to invest in Nova Bank?

3 A I don't believe so.

4 Q At some point during the regulatory approval process --
5 well, let me ask this differently.

6 During the regulatory approval process, how
7 enthusiastic were you about getting approved so you could
8 invest in Nova Bank?

9 A Well, this would be after I had done my due diligence on
10 the bank, and statements, and so forth. I was not exactly
11 happy.

12 Q Let me turn your attention to Exhibit 98, which I do not
13 believe is in evidence yet.

14 MR. IGNALL: May I approach, Your Honor, with a hard
15 copy?

16 THE COURT: Yes, sir.

17 (Brief pause.)

18 BY MR. IGNALL:

19 Q What -- what is Exhibit 98?

20 A It's from Barry, dated Thursday, October 15, 2009, to me.

21 Q And is it an e-mail? What type of document is it?

22 A Must be an e-mail, it's my e-mail address.

23 Q Is that your e-mail address, in the "To" line?

24 A Yes, mm-hmm.

25 Q And was that your e-mail address as of October 15, 2009?

Levin - Direct (Ign)

122

1 A Yes.

2 MR. IGNALL: The Government moves into evidence
3 Exhibit 98.

4 MR. EGAN: No objection.

5 MR. DUNCAN: No objection.

6 THE COURT: Admitted.

7 MR. IGNALL: May it be published, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. IGNALL:

10 Q All right. Flipping through it, what -- let me ask you
11 about this. In -- on October 15, 2009, did you still have any
12 dealings with Mr. Bekkedam with respect to the Banyon
13 investment?

14 A Yes.

15 Q And what relate -- what dealings did you have with him
16 then?

17 A We were ongoing, raising capital.

18 Q Raising capital from whom?

19 A From Barry's people, and --

20 Q All right.

21 A -- outside of Barry's people, also.

22 Q Let me turn your attention to the second page, where it
23 says, "bank."

24 Can you read to us what it says after "bank?"

25 A "Bank capital is due next week, Thursday, which is very

Levin - Direct (Ign)

123

1 important to me, and allows us to pursue the three Florida
2 banks we have identified, along with the Continental Bank
3 opportunity.

4 "Thirteen-point-five million TARP approved, and
5 we'll close next week. Ten million G. Levin (seven million
6 Nova is lending to G.L., five million done unsecured, and two
7 million Banyon collateral, and three million in cash).

8 "Three million management (done), 23,750,000 BCM
9 Florida Acquisition, et cetera (2.5 million draw)" -- "drawn,"
10 I'm sorry.

11 "I just need Frank to focus on bank docs, or
12 anything Brian Hartline needs early next week, and a wire for
13 three million.

14 "You signed a commitment for 18 million, but looks
15 like we only need ten million, with three million from you out
16 of pocket to execute the long-range plan."

17 Q All right. And at that point had you already borrowed
18 any money from Nova Bank for this?

19 A The five million, yes.

20 Q All right. What does the next sentence say?

21 A "Legal lending limit will continue to go up, and the
22 opportunity to capitalize on all your own deposit activity
23 makes total sense.

24 "As you know, I expect to fold BCM and Delaware
25 Valley Financial Group into the bank, as well."

Levin - Direct (Ign)

124

1 Q All right, did you, after this e-mail, invest any more
2 money with -- with -- into Nova Bank?

3 A No.

4 Q Did you apply to borrow any money from Nova Bank?

5 A Not at this time, no.

6 Q Let me turn your attention to Exhibit 114, which I do not
7 believe is in evidence. Well, it is in evidence, I'm sorry.

8 If we could turn your attention to the top of that,
9 what is this document?

10 MR. IGNALL: May I publish to the jury, Your Honor?

11 THE COURT: Yes, sir.

12 THE WITNESS: From Barry Bekkedam, Friday, October
13 23, 2009, to George Levin, my e-mail. Subject is
14 "Miscellaneous."

15 BY MR. IGNALL:

16 Q All right. As of October 23, 2009, do you know if Mr.
17 Bekkedam had raised funds for Nova Bank from any other source?

18 A I don't recall.

19 Q All right.

20 If we look at the body of this e-mail, and we go to
21 the -- the paragraph that starts with "again" -- you see where
22 it says, "Again, we originally assumed we would raise 50
23 million to execute on our plan, with 18 million being
24 committed by George?"

25 A Yes.

1 Q Do you know what that 18 million is?

2 A That was the original amount.

3 Q All right.

4 And it says, "Nova will lend George five million for
5 the first amount done."

6 At that point had you borrowed money from Nova?

7 A Yes.

8 Q And how much was that?

9 A Five million.

10 Q All right.

11 "The next amount was ten million, which I raised.
12 Five million done and funded, and George would fund five
13 million, which needs to be funded Wednesday."

14 Do you recall any discussions with Mr. Bekkedam
15 about him raising money from other sources for Nova Bank?

16 A I know he was out looking for money, yes.

17 Q Okay, you see next it says, "George will get two million
18 back from the bank in one-to-two weeks, the rest by early
19 first quarter?"

20 A Yes.

21 Q All right. Do you remember any discussions with Mr.
22 Bekkedam about you getting money back if you put it into the
23 bank?

24 A Not at this time.

25 Q All right. What does the next sentence say after that?

1 A "Based on the funding this week, we have been granted
2 13.5 million in TARP. We have requested an extension from the
3 Treasury, but cannot be guaranteed that we get it (they" --
4 "they are bureaucrats, not businessmen).

5 "The rest will be raised by us, depending on what we
6 need to grow."

7 Q All right. And did Mr. Bekkedam talk about any other
8 deals in this e-mail?

9 A No, this -- if you can blow it up I'll take a look.

10 Q Yeah, or you could look at the paper copy if you want,
11 also.

12 A Oh, okay. Is it this one that I'm looking at?

13 Q It's 114.

14 A Yeah, I don't have it. It's okay, that's fine.

15 Q Did I not give you 114? It's possible.

16 A I don't think so.

17 Q You -- we'll blow it up, it's blown-up on your screen
18 now, Mr. Levin.

19 A Okay, not a problem. Want me to read this?

20 Q Well, there are -- did you -- was Mr. Bekkedam discussing
21 any other deals with you in this e-mail?

22 A Another company, yes.

23 Q And did you have anyone who worked for you that you
24 entrusted to deal with Mr. Bekkedam on various deals?

25 A It would be Frank.

Levin - Direct (Ign)

127

1 Q And what's Frank's last name, again?

2 A Preve.

3 Q All right. And is that -- and if we look at the e-mail,
4 kind of, address near the top, F-P-R-E-V-E at AOL.COM, do you
5 know who that is?

6 A That -- that's Frank.

7 Q All right. Let me turn your attention to around
8 Halloween of 2009. After Halloween of 2009, did you learn
9 about any change in the value of your investments with Mr.
10 Rothstein?

11 A Yes.

12 Q And was that change positive, or negative?

13 A Negative.

14 Q How negative?

15 A Extremely negative.

16 Q All right. After Halloween of 2009, were you in a
17 financial position to invest any money in Nova Bank?

18 A No.

19 Q Were you in a financial position to pay off on the
20 guarantees you made to investors?

21 A No.

22 Q And were you in a financial position to pay off your
23 guarantees with respect to Mr. Bekkedam's investors?

24 A No.

25 Q Did you ever discuss with Mr. Bekkedam about that, after

Levin - Direct (Ign)

128

1 Halloween of 2009?

2 A I don't recall that.

3 Q Did you ever tell any of this to Mr. Preve?

4 A About --

5 MR. DUNCAN: Objection. Relevance, Your Honor?

6 MR. LEVIN: Well, the --

7 THE COURT: Just a moment, please, sir.

8 BY MR. IGNALL:

9 Q Let me ask the follow-up question, and we'll come back to
10 that.

11 Did you ever designate Mr. Preve to talk to Mr.
12 Bekkedam about your finances?

13 A I don't recall.

14 Q All right. After your investment lost its value, were
15 you ever involved in a bankruptcy?

16 A Yes.

17 Q And when did that bankruptcy start?

18 A I think it was about May of 2010.

19 Q And how did you end up in bankruptcy?

20 A The -- some of the guarantees were called.

21 Q And were you in a position to pay those guarantees?

22 A No.

23 Q And were you paying the interest on the loan to Nova
24 Bank, up to that point?

25 A I believed I paid it up through December, January,

Levin - Direct (Ign)

129

1 something like that, '09 to '10 -- to January '10.

2 Q At some point after you declared -- or, you were in
3 bankruptcy, did you stop paying the interest?

4 A Yes.

5 Q Did you ever pay the \$5 million loan back?

6 A No.

7 Q As we stand here -- sit here today, have you paid back
8 that \$5 million loan?

9 A It has not -- it has not been paid back.

10 MR. IGNALL: May I have one moment, Your Honor?

11 THE COURT: Yes, sir.

12 (Brief pause.)

13 MR. IGNALL: Your Honor, I'd like to move into
14 evidence Exhibit 55, apparently I neglected to do that.

15 MR. EGAN: No objection.

16 MR. DUNCAN: No objection.

17 THE COURT: Granted.

18 MR. IGNALL: One moment?

19 THE COURT: Yes, sir.

20 MR. IGNALL: All right, no further questions. Thank
21 you.

22 THE COURT: Let's take 15 minutes.

23 (Whereupon the jury exits the courtroom.)

24 THE COURT: You may step down, sir. We're in
25 recess.

Levin - Cross (Ega)

130

1 (Recess at 2:39 p.m. to 2:58 p.m.)

2 (Jury not present.)

3 DEPUTY: All rise.

4 (Whereupon the jury enters the courtroom.)

5 THE COURT: All right, you may be seated. Good
6 afternoon.

7 MR. EGAN: Proceed?

8 THE COURT: You may proceed, counsel.

9 MR. EGAN: Thank you, Your Honor. Good afternoon,
10 Mr. Levin.

11 THE WITNESS: Good afternoon.

12 CROSS-EXAMINATION

13 BY MR. EGAN:

14 Q Mr. Levin, my name's Patrick Egan, I represent Brian
15 Hartline. We've never met before, right?

16 A No.

17 Q And, in fact, you -- you've never met Mr. Hartline
18 either, correct?

19 A Not personally, no.

20 Q And the vast majority of your discussions back in 2009
21 about investing in Nova Bank were not with Mr. Hartline,
22 correct?

23 A Would be with Barry Bekkedam.

24 Q And you also had a -- an assistant, I believe you call
25 them your business manager, Mr. Preve?

Levin - Cross (Ega)

131

1 A Correct.

2 Q And he had conversations, but you weren't party to all of
3 those, correct?

4 A Correct.

5 Q But he was what we would call your agent, right?

6 A Yes.

7 Q So, he had authority to act on your behalf?

8 A He did.

9 Q And when he did so, he did so with -- if he acted on your
10 behalf, it was pretty much same as you doing it, right?

11 A Yes.

12 Q Now, did you -- you met a man by the name of Larry Rovin,
13 right?

14 A Yes.

15 Q And, you know Mr. Rovin was Mr. Bekkedam's counsel,
16 correct?

17 A Yes.

18 Q And you know he had been a bank counsel prior in his
19 career, or did he tell you that?

20 A I didn't know that.

21 Q But you discussed these transactions with him, correct,
22 at some point?

23 A Yes.

24 Q Now, we can agree, right, that in 2009 you had a lot of
25 money?

Levin - Cross (Ega)

132

1 A Yes.

2 Q And some folks have said 300 million, someone said 400
3 million, it starts to be numbers that are --

4 A If you -- if you take the investments, it was quite
5 substantial if those investments had come to fruition.

6 Q And, indeed, that -- you're talking about the Banyon
7 investments?

8 A Yes.

9 Q Okay. But we don't -- you can set those aside for now.
10 You had a lot of money other than that, too, didn't you?

11 A Oh, yes.

12 Q You had cash?

13 A Yes.

14 Q You had airplanes?

15 A Yes.

16 Q Three, I think?

17 A Yes.

18 Q You had a boat?

19 A Yes.

20 Q A lot of property?

21 A This is all before, yes.

22 Q Yeah, that's what we're talking about.

23 A Absolutely.

24 Q It's kind of, in your life, I assume, there's sort of
25 before Halloween 2009 and after, right?

Levin - Cross (Ega)

133

1 A Correct.

2 Q And things were pretty nice up until then, and not so
3 much after?

4 A Correct.

5 Q And decisions you made before Halloween 2009 certainly
6 were different than the decisions you would make after 2009 --
7 Halloween 2009?

8 A Yes.

9 Q I think you also testified that you had a good
10 relationship with your bankers?

11 A Yes.

12 Q And those are not Nova bankers, those are your bankers,
13 right?

14 A Yes, correct.

15 Q You're talking about TD Bank?

16 A No, I'm talking about Florida banks that I had done
17 business with prior to, nothing to do with TD.

18 Q Okay. And, actually, I went through this with Mr. Preve,
19 but you had, like, seven different banks in 2009, right?

20 A No, I'm not aware. I don't know.

21 Q Okay, well, we can go out -- we can go over it in detail.
22 But you had made most of this money prior to Banyon through a
23 whole lot of other entrepreneurial activities?

24 A Yes.

25 Q And you were very good at it?

Levin - Cross (Ega)

134

1 A Okay.

2 Q You were very successful, right?

3 A Yes.

4 Q Okay. And when you got involved in Banyon, you first did
5 it on your own, right?

6 A Yes.

7 Q And it was very successful, correct?

8 A Yes.

9 Q You were getting this 20-percent return?

10 A More than that.

11 Q More than 20-percent return. And then you decided that
12 you should expand this, and give it to -- or, offer it to
13 family and friends, correct?

14 A Yes.

15 Q But -- and that just meant people that you knew you were
16 close to, right?

17 A It was exactly what I said, family and friends.

18 Q Family and friends. But even though they were family and
19 friends, you didn't give it to them for free, did you?

20 A What -- I don't understand what that means.

21 Q Well, when you invited them to invest, they invested at
22 one rate, and you got a return at a different rate?

23 A Yes, I gave them a guaranteed rate.

24 Q And their guaranteed rate was lower than your rate?

25 A Oh, yes, absolutely.

1 Q And the point of --

2 A They all knew that.

3 Q Wasn't suggesting they didn't. But the point of it was
4 that you could make even more money that way?

5 A Correct.

6 Q And that was very successful?

7 A Yes.

8 Q So, you decided to open it up to general public
9 investors?

10 A It became -- there became a time for the need, the
11 investment was growing and growing and growing, exponentially.

12 Q Sure. And every time you brought in more investors, you
13 could make more money off of the difference between the
14 guarantee and what you were being paid, correct?

15 A It didn't work out totally that way.

16 Q That was that plan?

17 A We were -- we were trying to grow the business, so at one
18 point when we went with the funds, we actually were giving the
19 funds all of the return.

20 Q But it was the plan, that's the reason you did it?

21 A Was the plan to continue to grow it.

22 Q And you said something on direct, when -- when you were
23 asked by Mr. Ignall about investing in the bank, and whether
24 you wanted to use your own cash, and you said, "I wanted to
25 keep all the cash I could in Banyon," correct?

Levin - Cross (Ega)

136

1 A Invested, yes.

2 Q Because it was making more money?

3 A It was making good money, yes.

4 Q Right. So, if you were to invest -- if you were to take
5 cash out of Banyon, right, and put it in Nova Bank, it would
6 return a lower amount for you?

7 A Yes.

8 Q And, so, instead of taking the \$5 million out of Banyon
9 and putting it into Nova Bank, where it would return a lower
10 amount, what you said on direct is you replaced the \$5 million
11 you were going to invest with the loan, correct?

12 A Yes.

13 Q But you had the \$5 million, had you wanted to pull it
14 out?

15 A Yes.

16 Q Now, do you rec -- you were shown a --

17 MR. EGAN: Can we have G-15, please?

18 BY MR. EGAN:

19 Q You were shown a document, G-14, on direct -- and this is
20 the document right after that, G-15 -- and you see this?

21 A Yes.

22 Q And it's an e-mail from Mr. Bekkedam to Mr. Preve and
23 yourself, correct?

24 THE COURT: Preve.

25 MR. EGAN: Preve, pardon me.

Levin - Cross (Ega)

137

1 THE WITNESS: Yes, thank you.

2 BY MR. EGAN:

3 Q Mr. Preve and yourself?

4 A Yes.

5 Q And it's about selling of bonds and assumption of Nova
6 debt, correct?

7 A Yes.

8 Q So, that's the Colorado bond deal we talked about?

9 A Yes.

10 Q And also you were talking about assuming some other debt,
11 correct?

12 A In the Colorado -- you want me to read this?

13 Q You don't have to read it.

14 A I was read -- I was assuming the debt that Barry had with
15 the bank.

16 Q And that was at a point at which Mr. Preve would have
17 provided financial information to the bank for this deal,
18 correct?

19 A Yes.

20 Q Now, if we could go to Government's G -- oh, before we do
21 that, you were asked a bunch of questions about whether you
22 were interested in investing in a bank in Florida, remember
23 that?

24 A Yes.

25 Q And, indeed, you did see the va -- the wisdom in

Levin - Cross (Ega)

138

1 investing in a bank in Florida, correct?

2 A Yes, because of our huge amounts of bank funds we kept.

3 Q Right, you had all this cash. And if you had it in a
4 bank where you had a --

5 A Correct.

6 Q -- you were an investor, you'd get a better deal?

7 A Not so a better deal, but it would be helpful to
8 whichever bank it was, making investments.

9 Q Right, and then if you were invested in that bank, then
10 you would make more money?

11 A Correct.

12 Q And, so, that's what kind of made sense about investing
13 in a bank?

14 A Yes.

15 Q And you also thought, at the time, that Nova might be
16 able to become involved with a bank in Florida and become that
17 bank, right?

18 A Yes.

19 Q And that's one of the reasons why you agreed to buy Nova
20 stock?

21 A Correct.

22 MR. EGAN: Now, if we could have Government's 62?
23 And if we could go to Page 2?

24 BY MR. EGAN:

25 Q Can you read that, sir?

Levin - Cross (Ega)

139

1 A You need to blow it up a little bit.

2 MR. EGAN: If we can blow up the top part, please?

3 THE WITNESS: Okay.

4 BY MR. EGAN:

5 Q It's a signature page for subscriptions by individuals,
6 correct?

7 A Yes.

8 Q And this is your subscription to buy \$18 million worth of
9 Nova stock, correct?

10 A Yes.

11 Q And that's because you did agree to buy \$18 million worth
12 of Nova stock?

13 A In the beginning, yes.

14 Q In the beginning, but once you had agreed to it, it was
15 kind of like a contract, right?

16 A I would believe so.

17 Q So, you were obligated to invest the \$18 million,
18 correct?

19 A Would be so.

20 Q And the only way you wouldn't have to invest the \$18
21 million is if some other contingency occurred that would cause
22 you to not have to do so, correct?

23 A Well, I -- if -- if you could make the investment, you
24 should make the investment. It's a contract.

25 Q And what ended up happening was you couldn't make the

Levin - Cross (Ega)

140

1 investment, because your money that you invested with Mr.
2 Rothstein, that investment failed?

3 A Yes.

4 Q Absent that, you would have been obligated to make the
5 investment, correct?

6 A Correct.

7 Q Now, I believe you testified that Mr. Preve kind of
8 looked into this for you, and you didn't really look into it
9 until after the fact, is that your testimony?

10 A That is correct.

11 Q Okay, so, you relied on Preve's recommendations as to
12 whether this was a good bank to buy or not?

13 A Right, he was an ex-banker, so --

14 Q Okay.

15 A -- I figured he knew how to look at a bank.

16 Q All right. And, so, you've committed yourself to buy \$18
17 million of bank stock without investigating whether it was a
18 good investment?

19 A The way it was explained to me verbally was not what I
20 saw when I saw the documents.

21 Q Okay. And -- but you still, because of your commitment,
22 and because you're an honorable man and honor your
23 commitments, you were going to see it through, right?

24 A To a certain extent, yes.

25 Q Sure.

Levin - Cross (Ega)

141

1 A Sometimes you enter into a contract that doesn't turn out
2 right.

3 And then, you wind up with lawyers, such as
4 yourself.

5 MR. EGAN: If I could have Government 64, please?

6 BY MR. EGAN:

7 Q And, I assume you have had quite a few of those over the
8 years, Mr. Levin?

9 A Not quite a few, but my share, I'm sure.

10 Q Okay. Government 64, if we could blow that up, you see
11 that that is a letter to the Federal Reserve Bank? See that?

12 A Yes.

13 Q And, it contains a change in control application, and
14 that's your change in control application to be approved to
15 buy more than \$5 million worth of Nova stock, right?

16 A That's what it says. I've never seen this before.

17 Q Okay, well, we'll go through it. I think there will be
18 parts that you'll recognize. But before we do that, you had
19 already invested \$5 million on July 21st, correct?

20 A Yes.

21 Q And that \$5 million didn't require this application,
22 because it didn't make you a change in control investor,
23 correct?

24 A That is correct.

25 Q So, it was the \$13 million that you were going to, but

Levin - Cross (Ega)

142

1 never invested, that would make you a change in control
2 investor, correct?

3 A Yes, correct.

4 Q And so, when you were asked questions, and we'll get to
5 some of the questions, about where your funding was going to
6 come from to provide that \$13 million, you were speaking to
7 the \$13 million, correct?

8 A Yes.

9 Q Now, if we could go to Page 8 of this document -- and,
10 sir, you see the certification there?

11 A Yes.

12 Q And you see the signature there?

13 A Yes.

14 Q Now, that's your signature, is it not, sir?

15 A Yes, it is.

16 Q Okay. So, this certification basically says that you
17 certify that all the information contained in this notice is
18 true and accurate, correct?

19 A Yes.

20 MR. EGAN: Okay. Now, if we could go back two pages
21 to Page 6?

22 And, if we could have that top box blown up? And,
23 could we publish it to the jury? This was admitted.

24 THE COURT: Yes, sir.

25 BY MR. EGAN:

Levin - Cross (Ega)

143

1 Q And, sir, you see here it says, "Provide the following
2 information, name and acquirer or transferee," that's you,
3 right, George Levin?

4 A Yes.

5 Q And the total of \$18 million, correct?

6 A Yes.

7 Q And it says, "Half from personal finances and half from
8 borrowed funds," correct?

9 A Yes.

10 Q Now, you didn't fill this out, did you?

11 A No.

12 Q You relied on Mr. Preve to pr -- to handle these matters?

13 A Yes.

14 MR. EGAN: Now, if we could go to Page 12 of this
15 document? Twelve, please?

16 BY MR. EGAN:

17 Q You see that personal information, biographical report?
18 See that?

19 A Yes.

20 Q That's -- that's your name, right?

21 A Yes.

22 Q And that's your city?

23 A Yes.

24 Q And you were born in Philly in 1940?

25 A Yes.

Levin - Cross (Ega)

144

1 Q So, this is your information here?

2 A Yes.

3 MR. EGAN: So, if we could go to Page 19?

4 BY MR. EGAN:

5 Q That's your financial report, correct?

6 A Appears to be so, yes.

7 Q And, again, this is something Mr. Preve would have
8 probably prepared?

9 A Yes.

10 Q But he would have prepared it, basically, because he had
11 access to all of your records?

12 A Absolutely, certified --

13 Q And certainly you trust --

14 A -- statements and everything else.

15 Q Yeah, and just -- I mean, just generally, it's
16 449,593,000 in March of 2009, does that sound about right?

17 A Yes.

18 MR. EGAN: Okay. And now if we could go to Page 26?

19 BY MR. EGAN:

20 Q And once again, sir, there at the bottom certification,
21 is that -- that's your signature, correct?

22 A Appears to be so, yeah.

23 Q Okay. So, basically, what you're saying is all of this
24 stuff about your finances is true, right?

25 A Yes.

Levin - Cross (Ega)

145

1 Q And the reason you're saying it's all true, because it
2 was true, correct?

3 A Correct.

4 Q Because at that point in time you had \$400 million or so
5 in -- in net worth, right?

6 A Yes.

7 Q And you were investing some funds from your own funds,
8 and borrowing some funds to put into Nova Bank, correct?

9 A Yes.

10 Q And that was the plan?

11 A (No verbal response given.)

12 MR. EGAN: So, now, if we could go to Government's
13 47?

14 BY MR. EGAN:

15 Q And, sir, you are not on this e-mail. However, it does
16 talk about you. So, I just -- if you could look at it
17 yourself there.

18 It appears to be an e-mail from a Frank Preve to a
19 Paul McMahon and Susan Levin at Hotmail.com.

20 Susan Levin at Hotmail.com, that's your wife's
21 address, correct?

22 A Yes.

23 Q And Paul McMahon, who's he?

24 A He runs the house --

25 Q Okay, he was, like, your guy who ran your house?

Levin - Cross (Ega)

146

1 A He ran a lot of different accounts.

2 Q Was he, like, your butler?

3 A Personal accounts.

4 Q Like a butler, or like --

5 A No, no, he's an office --

6 Q Okay. But he worked for you?

7 A Yes.

8 Q And, so, he had your authority to do things?

9 A Yes.

10 Q And your wife, obviously, is a cosigner on your account
11 at Gibraltar, right?

12 A I'm not --

13 Q Or was?

14 A I'm not sure.

15 Q Okay. But in any event, Mr. Preve is -- wants them to
16 know that he's sending this e-mail, correct?

17 A Yes.

18 Q Okay, and this e-mail says, "Please wire \$5 million from
19 George Levin's account at Gibraltar to Nova Bank," correct?

20 A Yes.

21 Q Now, you had an account at Gibraltar, right?

22 A Yes.

23 Q And all the money in that account belonged to you, right?

24 A Yes.

25 Q So, when Mr. Preve says I'm going to wire Mr. Levin's

Levin - Cross (Ega)

147

1 funds to Nova Bank, that's your money he's wiring, right?

2 A Yes.

3 Q And that's why he's telling your wife and Mr. McMahon?

4 A Yes.

5 Q And, certainly, if you didn't want Mr. Preve to wire \$5
6 million, you would not have allowed him to, correct?

7 A He had the authority to do it, but --

8 Q Because you had given it to him?

9 A Yes.

10 Q Now, sir, when you wired that \$5 million, it was to
11 purchase stock, correct?

12 A Yes.

13 Q And, in fact, you got stock, didn't you?

14 A Yes.

15 Q In fact, you got a stock certificate, didn't you?

16 A I don't know if I ever saw them, but I imagine they were
17 issued.

18 MR. EGAN: Okay, if we could have D-119? And the
19 jury is -- this is not admitted. May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 MR. EGAN: Oh, I don't need to, they can see it
22 there. I'm sorry.

23 BY MR. EGAN:

24 Q Now, Mr. Levin, I'm showing you what's been previously
25 marked as D-119. You see that?

Levin - Cross (Ega)

148

1 A Yes.

2 Q And that's a letter to you, correct?

3 A (No verbal response given.)

4 Q Right?

5 A Yes.

6 Q That's your address?

7 A Yes.

8 MR. EGAN: And if we could go to Page 2?

9 BY MR. EGAN:

10 Q And that is a Nova stock certificate, is it not, sir?

11 A Yes.

12 Q And it is dated on the bottom June 30, 2009, is it not?

13 A Yes.

14 Q And the purpose of this letter is actually because there
15 was a stock split that took place after -- a couple years
16 after all this, right?

17 A It was a reversal, was not a -- it was a stock reversal.

18 Q There's a difference, I guess. But the purpose was to
19 tell you --

20 A Oh, yeah, there's a big difference.

21 Q There was a purpose to -- was to tell you about it,
22 right?

23 A Yeah, this is a big difference.

24 Q Okay. This is your stock, right?

25 A Yes. Can you go back to the first one a minute?

Levin - Cross (Ega)

149

1 Q Sure.

2 A I'd like to see something. Can you blow that up for me?

3 Q Yeah.

4 A Thank you. Yeah, it's a one-for-five --

5 Q Right.

6 A -- reverse stock split.

7 Q Right. So, now you're getting -- well, actually, yeah,
8 we don't need to get into that.

9 But, basically, there's been a decision made by the
10 bank to change the way the stock is set up, and now you're
11 getting -- it's been split somehow, reversely?

12 A Correct. You're getting one share for every five that
13 you didn't have.

14 Q Okay. So, it's --

15 A Yes.

16 Q -- been devalued is what you're saying, right?

17 A Right.

18 Q Along with the ownership of that stock came voting
19 rights, did it not?

20 A Yes.

21 Q And, in fact, you exercised those voting rights at one
22 point, didn't you?

23 A No, I don't recall.

24 Q Well, if we could show Mr. Levin D-123, please?

25 All right, sir, do you see that document there?

Levin - Cross (Ega)

150

1 A Yes.

2 Q And, it's a special meeting of the shareholders, correct?

3 A Yes.

4 Q And, you would vote by -- I guess by fax to vote,
5 correct?

6 A Yes.

7 Q Okay, and down at the bottom, that's -- there are two
8 proposals. Do you see those? In the middle?

9 A Thank you.

10 Yes.

11 Q And, you voted for them, --

12 A Yes.

13 Q -- apparently.

14 A Yes.

15 Q And, that's your signature there, correct?

16 A Yes.

17 Q On April 14, 2010.

18 A Correct.

19 Q So, you basically now had an investment in Nova Bank of
20 \$5 million, which you owned, correct?

21 A Yes.

22 Q Five-million dollars worth of stock.

23 A Right.

24 Q And, you had a loan to Nova Bank where you owed them \$5
25 million, correct?

Levin - Cross (Ega)

151

1 A Correct.

2 Q And, those are both legal, binding obligations, correct?

3 MS. BARRY: Objection. Based on what legal --

4 BY MR. EGAN:

5 Q Those are both binding obligations?

6 A Yes.

7 Q Okay. And, but as you discussed with Mr. Ignall, after
8 some time after June, you looked at the bank more carefully
9 and decided you weren't really that big a fan, right?

10 A That was '09, yes.

11 Q Yeah. We're going back to '09 now.

12 So, you had filed the change of control, you agreed
13 to do that, but along come the regulators, and they've got
14 some questions, right?

15 A Yes.

16 Q Now, if we could go to Government's 64 -- oh, no, never
17 mind. Don't go to Government's 64. My bad.

18 If we could go to Government's 74, and I believe
19 this is an e-mail that Mr. Ignall discussed with you, correct?

20 A Yes.

21 Q "Fed follow-up questions?"

22 A Yes.

23 Q All right, so if you go down to the bottom, this is all
24 being forwarded to you -- this has been forwarded to you, and
25 now you're writing to Barry about it.

Levin - Cross (Ega)

152

1 A Yes.

2 Q If you go down to the bottom, this is what was forwarded
3 to you, correct?

4 A (No verbal response given.)

5 Q And, it's from a Donna Metcalfe at the State of
6 Pennsylvania, right?

7 A Yes.

8 Q And, it's to Kim Hartline.

9 A Yes.

10 Q You never met her either, right?

11 A No.

12 Q And, it's a couple of questions that the federal -- that
13 the regulators have, correct?

14 A Yes.

15 Q One has to do with classic motor carriages. We don't
16 need to get into that.

17 A Okay.

18 Q The other has to do with the source of the funds, right?

19 A Yes.

20 Q And, it says, "The source of the funds to be used to
21 purchase the stock," correct?

22 A Yes.

23 Q So, basically, what they're asking here is, "Where's the
24 rest of the money coming from," right?

25 A Right.

Levin - Cross (Ega)

153

1 Q And, the number for this regulator is put down at the
2 bottom there for anybody who wants you to call, correct?

3 A Correct.

4 Q So, certainly, if you wanted to, you could have called
5 those people up, right?

6 A Yes.

7 Q And, Mr. Hartline never told you what you should or
8 shouldn't say to them, did he?

9 A Me directly? No.

10 Q Now, you're not too happy about this, so you say, "Barry,
11 why am I involved in this? I'm trying to help you out,"
12 correct?

13 A Correct.

14 Q But, you were trying to help Barry out not out of the
15 goodness of your heart, but because Barry was supposed to be
16 doing some things for you, as well, correct?

17 A No, Barry, in this particular investment, he had
18 convinced me that it was a good investment.

19 Q Right, but you had said on direct, I believe, that one of
20 the reasons you didn't want to complain about this was because
21 you were still hoping that he would come through with more
22 funds for Banyon.

23 A I never said that.

24 Q No?

25 A No.

Levin - Cross (Ega)

154

1 Q Maybe I misheard you, sir, I'm sorry.

2 All right, if we could go to Government's 80.

3 And, you were shown this on direct. And, there's a
4 discussion down at the bottom about Nova Bank and, you know,
5 how you might be able to put in more money, correct?

6 A I don't think --

7 Q Oh, that's not Government's 80.

8 A Oh.

9 Q It's 80.

10 A Eighty.

11 Q I'm sorry. My bad.

12 A If you could blow that up for me, I'd appreciate it.

13 Q Sure. See that down at the bottom? There's a discussion
14 about Nova Bank?

15 A (No verbal response given.)

16 Q And, kind of, what you could or couldn't do? Or,
17 basically, Mr. Bekkedam's trying to get you to still put the
18 money in, isn't he?

19 A (Brief pause.)

20 Yes.

21 Q And then, he says, "And, Brian needs something from you,
22 too," and that is these two questions on the next page.

23 A I don't see that.

24 Q Well, we're going to get -- if we could go to the next
25 page down, please?

Levin - Cross (Ega)

155

1 (Brief pause.)

2 See that?

3 A Yeah.

4 Q And, these are basically the same two questions that you
5 were asked --

6 A By --

7 Q -- that's on the prior e-mail, right?

8 A By the regulators, yes.

9 Q Yeah. And, question two says, they ask where the
10 potential money would come from, correct?

11 A Yes.

12 Q Okay.

13 A If they --

14 Q Now, --

15 A I'm sorry.

16 Q Just going back to the top of the e-mail, --

17 A Mm-hmm.

18 Q -- just the -- we just need the header.

19 Brian Hartline's not on this e-mail, is he?

20 A No.

21 Q Now, if we could have D-56?

22 (Brief pause.)

23 And sir, -- if we could blow up the top, please?

24 This is an e-mail from Frank Preve to you, correct?

25 A Yes.

Levin - Cross (Ega)

156

1 Q And, the subject is, "Have you heard from the Fed or the
2 State Banking Department."

3 But, it's forwarded, correct?

4 A Right.

5 Q And, below it is an e-mail from Mr. Hartline to Mr. Preve
6 that he's forwarding, right?

7 A (No verbal response given.)

8 Q And, basically, he's just asking, "Hey, if you hear from
9 the Fed or the State Banking Department, could you please let
10 us know," right?

11 MR. IGNALL: I'm going to object to --

12 THE WITNESS: Yeah, it's the same question --

13 MR. IGNALL: -- reading --

14 THE WITNESS: -- as before.

15 MR. IGNALL: -- from a document that's not in
16 evidence. I don't believe this witness has --

17 THE COURT: Sustained --

18 MR. IGNALL: -- first-hand knowledge.

19 THE COURT: Sustained.

20 MR. EGAN: Very well.

21 BY MR. EGAN:

22 Q Then, if we could just go to the top e-mail.

23 That one's to you, right?

24 A Yes.

25 Q And, Mr. Preve says to you, "Perhaps you won't be

Levin - Cross (Ega)

157

1 approved, and we won't have to waste 18 million on this
2 boondoggle," right?

3 A Yes.

4 Q So, you guys want out at this point.

5 A It was September 15, 2009.

6 Q Right. And, you continued to want out until Halloween,
7 right?

8 A Correct.

9 Q And then, on Halloween, a lot of other things became a
10 whole lot more important.

11 A Yes.

12 Q The failure of Mr. Rothstein's investments or your
13 investments through Mr. Rothstein had a very significant
14 impact on you financially, correct?

15 A Yes.

16 Q But, it didn't mean you had nothing, did it?

17 A Correct.

18 Q You still had airplanes?

19 A Those airplanes belonged to the companies.

20 Q Okay.

21 A Okay. They weren't my airplanes. They were a company --
22 the company's airplanes.

23 Q The companies that you owned's airplanes.

24 A Yes.

25 Q Okay. So, the companies you owned still had airplanes.

Levin - Cross (Ega)

158

- 1 A Yes.
- 2 Q You still had real estate holdings.
- 3 A Yes.
- 4 Q You still had this -- I guess it's a manufactured home in
5 New York's --
- 6 A Yeah.
- 7 Q New York development?
- 8 A Yes.
- 9 Q You still had the Madison house.
- 10 A Yes.
- 11 Q And, you still had a house in Devon, Pennsylvania, right?
- 12 A Yes.
- 13 Q And, that house in Devon, Pennsylvania is a house that
14 you had bought during the good times, right?
- 15 A Yes.
- 16 Q And, you were spending a lot of money to fix up.
- 17 A Yes. It was restored. It was being restored.
- 18 Q And, it's a very beautiful home, and --
- 19 A Yes.
- 20 Q -- it's --
- 21 A Yeah.
- 22 Q You spent a lot of money to restore it.
- 23 A Yes. It's a certified --
- 24 Q And, one of the reasons you were looking for more cash
25 flow during this period of time was because a lot of cash went

1 into that property, right?

2 A (Brief pause.)

3 I'm not so sure about that.

4 Q You don't really remember, or --

5 A I think that -- it's a certified historic structure, and
6 we gutted it.

7 So, but there was a mortgage on it already.

8 Q Right. A mortgage of about --

9 A Well, --

10 Q -- \$1 million.

11 A How much?

12 Q One million dollars.

13 A I think it was a little more, but okay.

14 Q And, the home was worth close to \$5 million, right?

15 A No. It could have been valued at \$5 million. But,
16 that's not what it eventually went for because it never got
17 finished.

18 Q But, it was valued -- it was valued at close to \$5
19 million.

20 A It could have been. If it was finished.

21 Q Now, after Halloween, when you no longer were in the same
22 position as you'd been previously been, but you still had
23 assets, you needed to try to restructure your assets to
24 protect what you had, right?

25 A I tried to.

Levin - Cross (Ega)

160

1 Q And, one of the things you wanted to do was reduce the
2 amount of payment you were making on this loan you had taken
3 out with Nova, correct?

4 A I'm not sure of the timing, but I know that yes, I
5 definitely was --

6 Q And, you wanted to get the loan reduced by putting up
7 some collateral so you didn't have to pay so much per month,
8 right?

9 A I think that's the way it eventually worked out.

10 Q And, eventually, you did give them a security interest in
11 something coming out of Madison house, right?

12 A Well, yes, that's right. Yes.

13 Q But, in the meantime, you also explored giving them a
14 security interest in the home in Devon.

15 Do you remember that, too?

16 A I don't recall that.

17 Q That was the house at 326 South Fairfield Road, correct?

18 A That is correct.

19 Q And now, sir, you testified on direct examination that
20 you filed for bankruptcy. Do you remember that?

21 A I didn't file.

22 Q You were forced into bankruptcy.

23 A Yes.

24 Q You were forced into bankruptcy by your creditors.

25 A A group of creditors, yes.

Levin - Cross (Ega)

161

1 Q And, you testified this morning or earlier that you
2 thought that was in May of 2010.

3 A I don't recall the exact date. It could have been June,
4 it could have been, you know, --

5 Q Well, how about August? How does that sound?

6 A Sounds right.

7 Q Okay, so if I were to represent to you that the docket
8 indicates it was filed in August of 2010, that would be
9 correct?

10 A Then that's what it would be.

11 Q And, when you file for bankruptcy, you have to do a big
12 schedule of everything you own and everything you owe, right?

13 A Yes.

14 Q And, one on the one column is everything you own, that's
15 assets.

16 A Yes.

17 Q And, the other column is everything you owe, liabilities.

18 A Yes.

19 Q One of the assets that you brought up in your bankruptcy
20 was Nova stock, correct?

21 A Probably.

22 Q And, one of the liabilities you brought up was the Nova
23 loan, correct?

24 A Yes.

25 MR. EGAN: I have no further questions, Your Honor.

Levin - Cross (Dun)

162

1 THE COURT: You may proceed.

2 CROSS-EXAMINATION

3 BY MR. DUNCAN:

4 Q Good afternoon, Mr. Levin.

5 A Good afternoon.

6 Q Mr. Levin, I believe you testified that you were born
7 here in PA?

8 A Yes.

9 Q And, that was a little while ago, we won't ask about the
10 years.

11 But, your children still live here, don't they?

12 A Yes.

13 Q How many children do you still have living here in
14 Pennsylvania?

15 A In Pennsylvania, I have one daughter and one grandchild.

16 Q Okay. And, Mr. Egan talked to you a moment ago about
17 that house? That nice house that was purchased in Devon? You
18 purchased that in 2008, is that correct?

19 A That is correct.

20 Q And, you had your daughter actually supervise the
21 renovation project, right?

22 A Yes.

23 Q And, she was good at it wasn't she?

24 A Yes.

25 Q You've lived in Florida since approximately 197, right?

Levin - Cross (Dun)

163

1 A Yes.

2 Q And, in 2009, you were trying to establish residency in
3 St. Thomas in the U.S. Virgin Islands, --

4 A Yes.

5 Q -- is that correct? And, that was for tax purposes?

6 A Yes.

7 Q And, you -- you previously stated you spent time from --
8 basically from June of 2009 all the way to the end of 2009,
9 most of the time in St. Thomas, correct?

10 A Till October 31st, --

11 Q Okay.

12 A -- yeah.

13 Q And, the reason you were doing that was for tax liability
14 issues, right?

15 A We were establishing a residency in St. Thomas.

16 Q And, your plan was to move the Banyon Income Fund
17 business down there, correct?

18 A Yes.

19 Q And, that would help you from a tax perspective, correct?

20 A Yes.

21 Q Okay. While you were doing that, you were traveling back
22 and forth on your -- was it your Gulfstream? Which airplane
23 did you use?

24 A Depending on what I was doing, I was trying to get back
25 on the weekend, I would come here -- if you -- any part of the

Levin - Cross (Dun)

164

1 day that you spend in St. Thomas, whether it was an hour or
2 not, you got credit for being there.

3 So, I would leave there early on a Monday morning
4 and spend maybe Monday and Tuesday here and be back by Tuesday
5 night so I didn't lose anytime.

6 Q So, while you were traveling, you were a little harder to
7 get in touch with, correct?

8 A Yes.

9 Q And, that was one of the issues you and Mr. Bekkedam had.
10 He was trying to get in touch with you, but it was on some of
11 the e-mails --

12 A True.

13 Q -- he couldn't quite reach you. Correct?

14 A Yeah.

15 Q So then, he would talk to Mr. Preve, correct?

16 A Yes.

17 Q Okay. Sir, in 2007, 2008, you believed you were worth
18 roughly \$150 and \$200 million. That's without the Banyon,
19 right?

20 A That's true.

21 Q And, about -- of that time, you had something between \$10
22 million and \$20 million cash? Liquid assets?

23 A Probably so.

24 Q While you were dealing with Banyon, you initially started
25 using your own money, correct?

1 A Yes.

2 Q And, at some point, you went to some hedge funds up in
3 New York, correct?

4 A Correct.

5 Q So, you had originally had all of the money from the
6 settlement funds in your personal bank at Gibraltar, correct?

7 A Yes.

8 Q And, the hedge funds wanted you to move that money out of
9 the Gibraltar Bank into TD Bank, correct?

10 A That is correct.

11 Q And, you didn't like dealing with those hedge funds, did
12 you?

13 A Not after we got going. Of course not.

14 Q And, the reason you didn't like dealing with them is they
15 were constantly putting extra requirements on you.

16 A Yes.

17 Q And, they were constantly trying to get as much money for
18 themselves as they could, correct?

19 A Well, they were entitled to whatever they were entitled
20 to. The deal they struck was a very tough deal.

21 Q And, the deal they struck meant that you had to give them
22 more than you wanted to give them, correct?

23 A Yes.

24 Q In fact, you referred to them as the "hotel hedge funds,"
25 because they were expensive like going to a fancy hotel,

Levin - Cross (Dun)

166

1 right?

2 A Well, I never heard that before, no.

3 Q Okay. Maybe I -- maybe I just imagined it.

4 MS. BARRY: Objection, Your Honor.

5 THE COURT: Sustained.

6 MR. DUNCAN: I'll withdraw, Your Honor.

7 BY MR. DUNCAN:

8 Q So, when they made you switch it to TD Bank, that was
9 2008? Is that when that happened --

10 A Yes, when we -- they didn't think that Gibraltar was big
11 enough for the business, and they were correct.

12 Q At that time, you were looking for your own bank because
13 you wanted to have some control over the assets, correct?

14 A I thought it made a good -- would make a good marriage
15 because we had huge amounts of cash.

16 Q So, you were personally looking for your own bank down
17 there in Florida, correct?

18 A Not really. I had a couple of opportunities. I didn't
19 do it.

20 Q You had a couple of opportunities. One of them was a,
21 sort of, a distressed bank, right?

22 A I don't recall.

23 Q Okay, you had -- you looked at a bank in Florida called
24 Flagler Bank?

25 A I don't recall that. But, I had a couple of friends who

Levin - Cross (Dun)

167

1 started banks that I just didn't get involved with.

2 Q And, basically, throughout your career, you were always
3 interested in banks, weren't you?

4 A Well, I guess everybody's interested in banks, one way or
5 another.

6 Q So, Mr. Preve testified yesterday that you were also
7 talking to him about investing in banks, and he was always
8 talking you out of it.

9 You wouldn't disagree with that, would you?

10 MS. BARRY: Objection.

11 THE COURT: Sustained.

12 BY MR. EGAN:

13 Q Sir, did you talk to Mr. Preve frequently about investing
14 in banks?

15 A It wasn't a major subject, that's for sure.

16 Q What was Mr. Preve's position? It was -- he was against
17 you investing in banks, correct?

18 A Absolutely.

19 Q At some point, late 2008, 2009, you met our client, Barry
20 Bekkedam, correct?

21 A Yes.

22 Q And, you met him basically indirectly through his wife,
23 Diane, right?

24 A I don't know if it was through Diane. I'm not sure. I
25 think it's --

1 Q Diane had a relationship with Mr. Gruverman, and
2 that's --

3 A Yeah, right. That's correct. That's correct.

4 Q Mr. Bekkedam, you know he was involved in some sort of
5 financial business, right?

6 A Yes.

7 Q And, if I told you that was a registered investment
8 advisory business, you wouldn't disagree with me, would you?

9 A No.

10 Q And, a registered investment advisor basically advises
11 high net worth people on how to invest their money, correct?

12 A Correct.

13 Q And, that's what was Mr. Bekkedam's business, right?

14 A Yes.

15 Q In 2008, you were a high net worth individual, weren't
16 you?

17 A Yes.

18 Q 2009, you were a high net worth individual.

19 A Yes.

20 Q Mr. Bekkedam came to you specifically after his wife had
21 arranged that introduction to see if he could get you as a
22 client of Mr. Levin, right?

23 A Correct.

24 Q You liked Barry Bekkedam when you met him, didn't you?

25 A Sure did.

Levin - Cross (Dun)

169

1 Q You were very fond of him, weren't you?

2 A Yes.

3 Q And, you were fond of him both personally and as a
4 professional, correct?

5 A Yes.

6 Q You were very impressed with Mr. Bekkedam's professional
7 demeanor as it related to his business, correct?

8 A Yes.

9 Q You were so impressed with that business, that you
10 entered into a number of business deals with Barry Bekkedam,
11 correct?

12 A Yes, I guess you would say.

13 Q All of those deals you entered into with Mr. Bekkedam,
14 you had Mr. Preve help you with, correct?

15 A Always, correct.

16 Q And, all of those deals were properly documented by
17 written agreements drafted by lawyers and reviewed by lawyers,
18 correct?

19 A Yes.

20 Q You thought Mr. Bekkedam's business had great growth
21 potential, correct?

22 A Yes.

23 Q And so, you were interested personally in being involved
24 with Barry in making sure that his Ballamor business grew,
25 correct?

Levin - Cross (Dun)

170

1 A I would have liked to see that happen, yes.

2 Q One of the things that you also did with Mr. Bekkedam was
3 you created a special Banyon fund specifically to address Mr.
4 Bekkedam's client's needs, correct?

5 A Yes.

6 MR. DUNCAN: And, if we could just pull up for a
7 moment, Government's -- I'm sorry, Defense Exhibit 1066, and
8 don't publish it to the jury.

9 It will come on your screen. Just a moment, Mr.
10 Levin.

11 BY MR. DUNCAN:

12 Q And, do you see Defense Exhibit 1066?

13 A Yes.

14 Q And, this is the offering memorandum, a confidential
15 offering memorandum, for the Banyon Income Fund, LP, correct?

16 A Yes.

17 Q You were the general partner for that income fund,
18 correct?

19 A Yes.

20 Q The general partner is the person who's responsible for
21 all of the legal things. You're basically running the fund,
22 correct?

23 A Correct.

24 Q Among the things that Mr. Bekkedam insisted, you had to
25 get a law firm to create this document, correct?

Levin - Cross (Dun)

171

1 A Yes.

2 Q And, you got the Gersten Savage law firm to do it,
3 correct?

4 A That is correct.

5 Q And, Mr. Rovin, Barry's general counsel at Ballamor, they
6 also -- he also was involved in the legal parts of this,
7 correct?

8 A Yes.

9 Q You stayed out of the legal parts, didn't you?

10 A One-hundred-percent.

11 Q Sir, in this document, if you would -- could we go to
12 Page 18, please, of the document? It's D-1066-024.

13 And, if you could blow up the third paragraph there
14 at the bottom, please? Under -- there you go.

15 And, just take a moment and read that to yourself,
16 Mr. Levin, and tell me when you're ready.

17 A (Brief pause.)

18 Correct.

19 Q Okay. That summarizes some of the business deals you had
20 with Mr. Bekkedam, correct?

21 A Yes.

22 Q And, it was produced in the legal documents for the
23 review of anybody who received this prospectus, correct?

24 A Yes.

25 Q And, among the things that you said in there is that you

Levin - Cross (Dun)

172

1 and Mr. Bekkedam were going to get together so that you could
2 make an equity investment and help Mr. Bekkedam's business
3 grow, correct?

4 MR. IGNALL: Objection. This document's not
5 evidence.

6 MR. DUNCAN: I'm not offering it in evidence, I'm
7 asking him a question.

8 MR. IGNALL: The question is asking him to agree
9 with what's in the document.

10 THE COURT: All right. Sustained as to that
11 reference.

12 MR. DUNCAN: I'll rephrase, Your Honor.

13 THE COURT: All right.

14 BY MR. DUNCAN:

15 Q Sir, you agreed to make an equity investment in Mr.
16 Bekkedam's company, correct?

17 A Yes.

18 Q Okay. You testified that Mr. Bekkedam's clients were
19 going to be in this fund, right?

20 A Yes.

21 Q And, one of the things Mr. Bekkedam insisted to protect
22 his clients was that those clients get the same guarantee that
23 your friends and family and other people got in the Banyon
24 funds, correct?

25 A Correct.

Levin - Cross (Dun)

173

1 Q And, that's a good thing for Mr. Bekkedam's clients,
2 you'd agree.

3 A Yes.

4 Q The percentage you were paying Mr. Bekkedam's clients,
5 though, was substantially less than the percentage of money
6 you were making on the investment, correct?

7 A When you use the word, "substantially," --

8 Q Yeah, let me -- that's probably -- that's a little
9 unfair.

10 Let me -- let me use the numbers. So, you were
11 paying Mr. Bekkedam's clients on the average of 12 to
12 15-percent, and you were getting on the average of 20 to
13 30-percent in returns, correct?

14 A That's correct.

15 Q You agreed that Mr. Bekkedam would not receive any
16 commission on any of the people -- any of his clients he put
17 into the fund, correct?

18 A That is correct.

19 Q He didn't earn a dime on this deal, did he?

20 A Correct.

21 Q Mr. Preve handled all the legal parts of this for you,
22 correct?

23 A Yes, with the law firm.

24 Q At the time, did you know that Mr. Pr -- you did not know
25 that Mr. Preve had a side deal with Scott Rothstein, did you?

Levin - Cross (Dun)

174

1 A No.

2 Q In fact, he had a side deal whereby Scott Rothstein was
3 paying him approximately \$50,000 a month, correct?

4 MR. IGNALL: Objection.

5 THE COURT: Just a moment, please. May I see you,
6 please?

7 (At sidebar.)

8 THE COURT: The basis for the objection?

9 MR. IGNALL: My objection is relevance.

10 THE COURT: (Inaudible)?

11 MR. DUNCAN: Well, Mr. Preve -- this witness had a
12 lot of conversations with Mr. Preve, this is how reliable this
13 wit --

14 THE COURT: Preve.

15 MR. DUNCAN: Preve, thank you, Your Honor. How
16 reliable Mr. Preve is, whether he was deceiving his -- his
17 patron, and this is what we want to find out about. It goes
18 to Mr. Preve's credibility.

19 THE COURT: It does.

20 MR. IGNALL: Well, but I'm not sure it's the
21 appropriate way to challenge Mr. Preve's credibility. It
22 doesn't go to reputation, it doesn't --

23 THE COURT: Well, if the jury finds through his
24 questioning on any actual issue that Mr. Preve -- that this
25 witness is more credible and believable, and Mr. Preve said

Levin - Cross (Dun)

175

1 something that was wholly different from that, it affects Mr.
2 Preve's credibility.

3 MR. IGNALL: It may, but it's not an appropriate way
4 to challenge Mr. Preve's credibility. This is trying to use
5 extrinsic evidence to something that Mr. Preve may have done,
6 and this is not an appropriate way to attack character for
7 truthfulness.

8 THE COURT: The difference here is that Mr. Preve
9 has testified about certain matters. He can impeach the
10 testimony with Mr. Levin's version of the facts of those
11 situations.

12 MR. IGNALL: He can, he just can't -- this is not
13 about Mr. Preve's testimony to a fact that's in issue here.

14 This is something collateral, whether Mr. Preve was
15 truthful with respect to Mr. Rothstein.

16 MR. DUNCAN: It's --

17 MR. IGNALL: It's 608B, Your Honor.

18 THE COURT: One at a time.

19 MR. IGNALL: 608(b) that you can't attack the
20 witness's credibility with extrinsic evidence this way.

21 MR. DUNCAN: I'm not doing it on extrinsic evidence,
22 Your Honor. I'm asking him a question. He can testify to his
23 impressions of what Mr. Preve told him.

24 If he denies it, then of course--

25 THE COURT: The specific --

Levin - Cross (Dun)

176

1 MR. IGNALL: That's extrinsic -- I'm sorry -- to Mr.
2 Preve.

3 THE COURT: That's all right. The specific subject
4 matter of this question relates to what?

5 MR. DUNCAN: It goes to whether or not Mr. Preve's
6 honesty (inaudible) come on through this witness, and whether
7 or not his word can be trusted with respect to a lot of the
8 things he said.

9 Mr. Preve -- this is key, one of the key events in
10 this case, Your Honor, is (inaudible) last week so, basically
11 deception of all of those people which just be (inaudible)
12 again toward this witness. If he says that Mr. Preve is a
13 trustworthy man, if he says of Mr. Preve, he couldn't trust
14 (inaudible).

15 THE COURT: I will allow it. I'm going to allow it.

16 MR. DUNCAN: Thank you.

17 (End of sidebar.)

18 MR. DUNCAN: Thank you, Your Honor.

19 BY MR. DUNCAN:

20 Q You can answer my question: did Mr. Preve tell you that
21 he had a side deal with Mr. Rothstein, in which Mr. Rothstein
22 was paying him approximately \$50,000 a month?

23 A No.

24 Q So, he hid that fact from you, correct?

25 A Yes.

Levin - Cross (Dun)

177

1 Q He lied to you, didn't he?

2 A Yes.

3 Q At some point, Mr. Bekkedam came to you and talked to you
4 about investing in a bank here in Philadelphia -- in the
5 Philadelphia area known as Nova Bank, correct?

6 A Yes.

7 Q You would agree that made sense to you, because you were
8 a Philadelphia guy, right?

9 A Yeah, from West Philly.

10 Q Okay. And your children and grandchildren are here?

11 A Yes, here in South Jersey.

12 Q And, you're building a house here -- or, you're
13 renovating a house here?

14 A Yes.

15 Q So, your having contacts here in Philadelphia made sense,
16 right?

17 A Yes.

18 Q The idea ultimately was to move the Banyon Income Funds
19 into that bank, or bank acquired by Nova in Florida, correct?

20 A Yes.

21 Q Mr. Bekkedam proposed that you invest \$18 million in --
22 in Nova Bank, right?

23 A Correct.

24 Q And, that would be a capital investment, that's
25 investment of capital into Nova Bank, right?

Levin - Cross (Dun)

178

1 A Yes.

2 Q You knew that Nova Bank was interested in expanding,
3 correct?

4 A Yes.

5 Q And, they were planning to acquire that company, that
6 Delaware Valley Financial Group, the insurance broker you
7 talked about in PA, right?

8 A Yes.

9 Q And, you knew that Delaware Valley Financial Group also
10 had an interest in Florida, correct?

11 A Yes.

12 Q And, Nova even had an interest in Florida. They were
13 interested in expanding to purchase a bank down in Florida,
14 correct?

15 A I didn't know that at the time, though.

16 Q You did learn that, correct?

17 A Yes.

18 Q Your issue at the time, when you were deciding whether to
19 invest in Nova Bank, was your liquidity issues, correct?

20 A Yes.

21 Q At the time, you had, basically, all of your funds,
22 liquid funds, tied up in the Banyon -- in Banyon investments,
23 right?

24 A More than.

25 Q And, you were reluctant to take any money out of those

Levin - Cross (Dun)

179

1 funds, because in doing so you would be taking money away from
2 a good investment, right?

3 A Yes.

4 Q So, you decided that the best way to do that would be to
5 obtain a loan in the first instance, in order to make your
6 initial investment in Nova, correct?

7 A Correct.

8 Q And that's called leveraging your money, right?

9 A Yes.

10 Q Leveraging your money is when you borrow at a lower rate,
11 but you're able to use that same -- that replacement money, as
12 it were, at a higher rate, correct?

13 A Yes.

14 Q You're much better at finance than I am, but that's the
15 basic principle, correct?

16 A I'm not sure of that, but that's okay.

17 Q Fair enough. You were used to taking out loans in order
18 to leverage your investments, right?

19 A I did it all the time.

20 Q Right, you did it -- all those real -- every real estate
21 deal you ever did was --

22 A Correct.

23 Q -- that way, correct?

24 A Correct.

25 Q You funded them through financing, through loans, right?

Levin - Cross (Dun)

180

1 A Yes.

2 Q So, there was nothing unusual when you did this with
3 relation to Nova Bank, correct?

4 A Correct.

5 Q You had no qualms, no uneasiness, no issues in doing it,
6 did you?

7 A No.

8 Q At the time, in fact, you already had other lines of
9 credit, didn't you?

10 A Substantial lines of credit.

11 Q You had one line of credit substantially above \$5 million
12 at the Mellon Bank, right?

13 A It was \$25 million.

14 Q You had -- you had \$5 million, and then you actually a --
15 one on top of that one, that's the \$25 million?

16 A Correct.

17 Q It's approximately, give or take, \$28 million?

18 A They were personal lines of credit.

19 Q Personal to George Levin, you could do whatever you
20 wanted with those lines of credit, right?

21 A Yes.

22 Q In fact, you had also financed some of your lines of
23 credit in the -- used some of your lines of credit to finance
24 the Banyon Income Fund, hadn't you?

25 A Yes, yes.

Levin - Cross (Dun)

181

1 Q And, you were worth \$400 million at the time, so getting
2 a loan was no big thing to you?

3 A No.

4 Q But you were not involved in the details of getting the
5 loan, were you?

6 A No.

7 Q You left all of that up to Frank Preve, correct?

8 A Yes.

9 Q Mr. Egan showed you some documents earlier, and those
10 were documents which related to stock certificates from Nova
11 Bank, correct?

12 A Yes.

13 Q So, the money that you used when you got that loan, you
14 actually used that to buy stock in Nova Bank, correct?

15 A Yes.

16 Q You would agree that as a matter of right, once the bank,
17 Nova Bank, granted you that loan and sent the money down to
18 your bank in Gibraltar, that money was yours to do whatever
19 you wanted with, correct?

20 A Absolutely.

21 Q But the understanding was, obviously, that you were going
22 to invest it into Nova Bank, correct?

23 A I was going to invest \$5 million into Nova.

24 Q But as a matter of right, you could have done whatever
25 you wanted with that money?

Levin - Cross (Dun)

182

1 A Yes.

2 Q Assuming Mrs. Levin agreed, right? She was on the
3 account, correct?

4 A I'm not -- as I said, I don't know. I'm --

5 Q Okay, I'll withdraw that.

6 MR. DUNCAN: Could we have the Court's indulgence
7 for just a moment?

8 THE COURT: Yes, sir.

9 MR. DUNCAN: Could we have Government's 67, please?

10 (Side comments off the record.)

11 MR. DUNCAN: Do you have any objection to my showing
12 it to the witness?

13 MR. IGNALL: We have no objection to this being
14 admitted.

15 MR. DUNCAN: Okay, good. Your Honor, with
16 stipulations, if Mr. Egan's okay, we'd admit 67.

17 (Side comments off the record.)

18 MR. DUNCAN: With the Court's indulgence?

19 THE COURT: Go right ahead.

20 MR. DUNCAN: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 BY MR. DUNCAN:

23 Q Have you ever heard of a bank called the Atlantic
24 Community Bankers Bank?

25 A Sure.

Levin - Cross (Dun)

183

1 Q That's here in the Philadelphia area, correct?

2 A The one I'm thinking of was in Florida.

3 Q Okay, well, perhaps -- perhaps, then, I may be mistaken.
4 Mr. Egan showed you a subscription agreement you signed with
5 Nova Bank.

6 MR. DUNCAN: And we can take down 67 now.

7 BY MR. DUNCAN:

8 Q Mr. Egan showed you a subscription agreement, which you
9 signed, with -- with Nova Bank, correct?

10 A Yes.

11 Q You've signed lots of contracts in your life, haven't
12 you, Mr. Levin?

13 A Yes.

14 Q Generally, you want to honor your contracts, don't you?

15 A Always did.

16 Q Okay, fair enough. And if you wanted to renegotiate, you
17 could, but the idea was you -- you signed a document, your
18 word was your bond, right?

19 A If they were renegotiated, there was a reason for it.

20 Q Okay. The \$5 million capital contribution you made to
21 Nova back in 2009, that came out of -- resulted from that
22 subscription agreement, correct?

23 MR. IGNALL: Objection to the predicate, Your Honor.

24 THE COURT: Sustained.

25 BY MR. DUNCAN:

Levin - Cross (Dun)

184

1 Q Did you tell the agents in this case that you had -- that
2 the \$5 million capital contribution you made was part of the
3 \$18 million subscription agreement with Nova?

4 MR. IGNALL: Same objection.

5 MR. DUNCAN: We have the MOI, Your Honor.

6 THE COURT: Overruled.

7 BY MR. DUNCAN:

8 Q You can answer the question.

9 A Would you say it again for me?

10 Q Sure, you told the agents in this case that -- I'll
11 quote, that, "The \$5 million capital contribution was paid of
12 an \$18 million subscription agreement with Nova," correct?

13 A (No verbal response given.)

14 Q That's yes, right?

15 A Yes.

16 Q The regulatory approval you needed, that was not
17 something you'd ever gone through before, is it, Mr. Levin?

18 A That's correct.

19 Q So, you left that all to Mr. Preve, right?

20 A Yes.

21 Q But the documents we've seen, admitted into evidence
22 here, all have your signature on as they relate to the change
23 in control, correct?

24 A Yes.

25 Q So, you had an opportunity to review them, correct?

Levin - Cross (Dun)

185

1 A There was one signature that wasn't mine, but --

2 Q Sure. You had an opportunity to review that document,
3 correct?

4 A Yes.

5 Q And if you wanted to change anything, you could?

6 A I could have, yes.

7 Q You saw the exhibit when Mr. Egan was asking you
8 questions. I don't need to pull it back up, but it said half
9 of the money was going to come from cash, and half of the
10 money was going to come from a loan, correct?

11 A Yes.

12 Q The cash money you were talking about, that was going to
13 come from the Banyon investments, correct?

14 A At that point in time everything was coming from Banyon.

15 Q At that point in time, in July of 2009, though, there was
16 a problem with getting money out of the Banyon Income --
17 Banyon investments, wasn't there?

18 A Yes.

19 Q In fact, the money had stopped coming to you out of the
20 Banyon Income Funds back in July of 2009, correct?

21 A No, not entirely.

22 Q It slowed down considerably, correct?

23 A It slowed down.

24 Q So, at that point you did not have the funds to take out
25 of the Banyon Income Fund, July of 2009, in order to make the

Levin - Cross (Dun)

186

1 rest of the investment you had committed to, correct?

2 A No, that's not true.

3 Q So, you did have the money, correct?

4 A Yes.

5 Q But you were reluctant to pay the money at that point,
6 correct?

7 A Yes, correct.

8 Q If I could take you to late -- sort of more middle part
9 of October of -- of 2009.

10 MR. DUNCAN: You know, Your Honor, actually, I'm
11 going to move into another area, I've probably got a good half
12 hour or so, if this is a convenient place.

13 THE COURT: It would be, thank you.

14 MR. DUNCAN: Okay, thank you, Your Honor, Mr. Levin.

15 THE COURT: Members of the jury, we're going to
16 recess for the day. Again, do not discuss the testimony
17 amongst yourselves, nor do any research of any kind regarding
18 the issues in this case.

19 Have a pleasant evening, I'll see you tomorrow
20 morning at 9:15. Thank you.

21 (Whereupon the jury exits the courtroom.)

22 THE COURT: You may step down, sir. We are
23 adjourned, thank you.

24 (Proceeding adjourned at 3:55 p.m.)

25

Levin - Cross (Dun)

187

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

* * * * *

C E R T I F I C A T I O N

I, Elena Zoniadis, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

**Elena
Zoniadis**

Digitally signed by Elena Zoniadis
DN: cn=Elena Zoniadis, o, ou,
email=dianadoman@comcast.net,
c=US
Date: 2016.04.15 12:30:11 -04'00'

April 11, 2016

ELENA ZONIADIS

DATE

DIANA DOMAN TRANSCRIBING, LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,) 14-CR-0548
)
v.)
)
BRIAN HARTLINE and)
BARRY BEKKEDAM,) Philadelphia, PA
) April 6, 2016
Defendants.) 10:05 a.m.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE C. DARNELL JONES, II
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: DAVID J. IGNALL, ESQUIRE
JENNIFER CHUN BARRY, ESQUIRE
ASSISTANT UNITED STATES ATTORNEY
UNITED STATES ATTORNEY'S OFFICE
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

For the Defendant PATRICK J. EGAN, ESQUIRE
Brian Hartline: FOX ROTHSCHILD LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19107

JOHN C. FULLER, ESQUIRE
FOX ROTHSCHILD LLP
2000 MARKET ST 20TH FL
PHILADELPHIA, PA 19103

For the Defendant MICHAEL J. ENGLE, ESQUIRE
Barry Bekkedam: GREENBLATT, PIERCE, ENGLE,
FUNT & FLORES
123 South Broad Street, Suite 2500
Philadelphia, PA 19109

Audio Operator: CARL HAUGER

Transcribed by: DIANA DOMAN TRANSCRIBING, LLC
P.O. Box 129
Gibbsboro, NJ 08026
Office: (856) 435-7172
Fax: (856) 435-7124
Email: dianadoman@comcast.net

Proceedings recorded by electronic sound recording; transcript
produced by transcription service.

APPEARANCES (Cont'd):

For the Defendant
Barry Bekkedam:

RUSSELL D. DUNCAN, ESQUIRE
SHULMAN, ROGERS, GANDAL, PORDY &
ECKER, PA
12505 Park Potomac Avenue
Potomac, MD 20854

JOEL D. SCHWARTZ, ESQUIRE
SHULMAN ROGERS GANDAL PORDY ECKER
12505 PARK POTOMAC AVE 6TH FL
POTOMAC, MD 20854

I N D E X

<u>WITNESS FOR THE GOVERNMENT</u>	<u>PAGE</u>
HILLARY GRINKER MUSSER	
Direct Examination by Mr. Ignall	46
Cross Examination by Mr. Schwartz	55
Cross Examination by Mr. Fuller	71

1 THE COURT: Good morning.

2 MR. EGAN: Good morning, Your Honor.

3 MR. IGNALL: Good morning, Your Honor.

4 MS. BARRY: Good morning, Your Honor.

5 MR. SCHWARTZ: Good morning, Your Honor.

6 MR. FULLER: Good morning, Your Honor.

7 THE COURT: You may be seated. All right, counsel, I
8 understand that there's something that needs to be addressed.

9 MR. EGAN: Yes, Your Honor. We've been advised by
10 the Government that one of their witnesses for today is an
11 individual by the name of William Sayre, S-a-y-r-e. Patrick
12 Egan on behalf of Mr. Hartline. We would ask for an offer of
13 proof with regard to Mr. Sayre. Mr. Sayre is a -- as I
14 understand it, works for a bank called ACBB. Mr. Levin applied
15 for a loan at ACBB and that loan was denied. I don't know how
16 that's at all relevant, other than as a judgment on whether the
17 credit decision at Nova was a proper credit decision. We've
18 already had testimony from Mr. Poliski that that credit
19 decision largely rested in his lap. And we could bring in 17
20 different banks and ask them all whether they would have given
21 Mr. Levin a loan. I don't see it as relevant to the charges in
22 this case.

23 THE COURT: All right, thank you. Good morning.

24 MS. BARRY: Good morning, Your Honor. Jennifer Barry
25 for the United States. Your Honor, a couple things. One,

1 there's already been mention of ACBB several times during the
2 trial. I believe there was possibly an exhibit related to ACBB
3 in May. I also believe that yesterday Mr. Duncan brought up
4 Government's Exhibit 67 and was about to ask questions of Mr.
5 Levin about an ACBB doc. And I think what's relevant, Your
6 Honor, in Government-67 is that the request to ACBB for Mr.
7 Levin was made on or about July 24, 2009, and what's
8 significant about that is they forward him the CI -- they
9 forward -- first of all, there was no communication between the
10 borrower, Mr. Levin, and ACBB. It was actually direct
11 conversations with Brian Hartline and ACBB regarding Mr. Levin.
12

13 And what's significant is that they send ACBB the CIC
14 application or the Change in Control Application that was filed
15 with the Federal Reserve. And in that what's significant is
16 Mr. Levin is to borrow \$18 million or is going to purchase \$18
17 million worth of Nova stock, and if you look, and they've made
18 a point of showing it several times, half of it from owned
19 funds, half of it borrowed. Well half of 18 is nine and the
20 request being made from ACBB is \$9 million.

21 So it's significant that they were going out and
22 trying to find a bank to provide a loan for Mr. Levin and that
23 loan was denied. And it also goes to show that they knew that
24 Mr. Levin, as of August of 2009, was unable to get a loan, at
25 least from another bank. And I think that's relevant, Your

1 Honor, in order to show, one, that they had to resort to going
2 to themselves, that they were the only option for the loan,
3 that they couldn't replace the money with some other borrowed
4 funds from another bank, and that they knew that once they were
5 on the hook for the \$5 million, and calling it capital, that
6 they were going to have to continue to conceal it from the
7 regulators.

8 THE COURT: Now, the first -- or several witnesses
9 have already testified, Government witnesses, that it is
10 appropriate to borrow monies from another bank to purchase
11 stock from Nova, correct?

12 MS. BARRY: Yes, Your Honor.

13 THE COURT: Additionally, Mr. Levin himself testified
14 that it was his custom to use OPM, as we used to say in law
15 school, and what's wrong with that?

16 MS. BARRY: There's nothing technically wrong with
17 that and that's the root that the -- Mr. Hartline was trying to
18 go, Your Honor, in July of 2009. What happens is ACBB --

19 THE COURT: But doesn't that cut both ways is my
20 point. What's the probative value of the information?

21 MS. BARRY: The probative --

22 THE COURT: And I understand the potential inference,
23 but the inference based upon the testimony thus far has been
24 that's just the way he did business and a lot of wealthy people
25 do business. A lot of poor people do business that way.

1 MS. BARRY: Well, it's the way that the bank was
2 planning on having his investment work out, was to have -- try
3 to get the money borrowed from another bank.

4 THE COURT: But what's wrong with that?

5 MS. BARRY: There's nothing wrong with that, Your
6 Honor, except that this -- except that it didn't happen. They
7 did not -- he got denied.

8 THE COURT: Well I'm saying, nothing beats a failure
9 but to try, counsel, so what. I mean, he tried to do it, it
10 didn't happen. So again, what's the probative value of it is
11 all I'm asking? I understand the inference that you'd like to
12 have here, but if it's going to be either way, based upon what
13 the Government's witnesses have testified to thus far, what's
14 the necessity of having this information, the probative value?

15 MS. BARRY: That he was unable to get a loan from
16 another bank, Your Honor, and that the only way to fund the
17 portion of Mr. Levin's investment was through Nova Bank itself.

18 THE COURT: That's the only way, arguably. But, for
19 example, when I look at this net worth list of all of the
20 properties he had a lot of money that he could have gotten
21 otherwise to do this if he really, really wanted to do it, not
22 just necessarily from this bank. He could have liquidated some
23 other things if he really, really wanted it. So if he would
24 rather do it by borrowing money, if a bank said no, others
25 could have said yes. Sure, take your time.

1 MS. BARRY: But, Your Honor, the issue is that the
2 loan is not disclosed. That's the issue.

3 THE COURT: He didn't get it.

4 MS. BARRY: No, no, no, the loan with Nova Bank is
5 not disclosed.

6 THE COURT: Okay. All right. I follow you.

7 MS. BARRY: That's the issue. If the money is -- if
8 they've got the money from ACBB, great, no --

9 THE COURT: The loan from Nova Bank, that preexisted?

10 MS. BARRY: Yes, Your Honor.

11 THE COURT: And was not disclosed in the application?

12 MS. BARRY: Anywhere, yes.

13 THE COURT: All right. Now let me hear from you
14 then. Thank you.

15 MR. EGAN: If we could clarify what application Ms.
16 Barry is talking about there.

17 THE COURT: I'm assuming she's talking about the
18 first loan.

19 MR. EGAN: No, no, but when you said not disclosed in
20 the application --

21 THE COURT: Oh.

22 MR. EGAN: -- I'm not sure what application she's
23 talking about.

24 MS. BARRY: In the ACBB application, the application
25 to ACBB that he had already borrowed \$5 million from Nova Bank,

1 anywhere in any paperwork to any regulator that he had borrowed
2 the \$5 million from Nova Bank. Instead they're saying oh, this
3 half borrowed funds and they're trying to get it from ACBB in
4 the application to the Fed, instead of saying well, he got five
5 million from us and hopefully he'll get another four million
6 from another bank. But they don't disclose it because they're
7 hoping that he'll get the whole nine million from this other
8 bank and then, you know, the five million that he borrowed from
9 Nova Bank that they're calling capital, you know, won't be an
10 issue for them any more. Right now they have to hide it.

11 THE COURT: All right.

12 MR. EGAN: That's an incredible stretch, Your Honor.
13 But in addition, the issue here is whether the probative value
14 of this person's testimony outweighs the prejudicial value.
15 And really the only reason they're calling this guy is to say
16 that Mr. Levin was denied a loan by this other bank, so
17 therefore, you can question why Nova gave the bank -- we have
18 all this testimony about whether --

19 THE COURT: No, no, if counsel has, by reason of my
20 questioning, narrowed down her proffer as the basis for the
21 evidence, which is that it was not disclosed, let me hear your
22 argument on that.

23 MR. EGAN: Well, Your Honor, if Mr. Sayre is going to
24 come in and testify and his testimony is simply going to be we
25 received an application from Nova Bank to obtain nine million

1 dollar loan to purchase stock and in that application it does
2 not say anything about the five million dollar loan that Mr.
3 Levin had already taken out, then I would withdraw my
4 objection. But I doubt very seriously that's as far as the
5 Government intends to go here.

6 THE COURT: That's as far as the Government's going
7 to go.

8 MR. EGAN: That's acceptable to the defense, Your
9 Honor.

10 THE COURT: All right.

11 MS. BARRY: Your Honor, may we revisit at the break
12 and ask you to reserve judgment on it because I believe that
13 that would prejudice the Government?

14 THE COURT: Tell me why.

15 MS. BARRY: Well, Your Honor, there's a couple of
16 things. One, we have an issue the loan at -- first, the first
17 issue is Mr. Levin's loan that Nova Bank made that it did not
18 disclose to regulators was going to be used to purchase Nova
19 Bank stock. I think the one issue is that Mr. Levin would not
20 be approved for a -- was not creditworthy based on a number of
21 factors from another bank. And the issue we have is Mr.
22 Madiany had indicated that he wanted more information on the
23 underwriting and it wasn't provided and so this loan went
24 through. Now, that's one issue.

25 THE COURT: But, counsel --

1 MS. BARRY: The more significant --

2 THE COURT: Counsel, just a second. Again, Mr. Levin
3 is not on trial here.

4 MA. BARRY: No, he's not.

5 THE COURT: And we're talking about what Nova did or
6 did not do.

7 MS. BARRY: Yes, Your Honor.

8 THE COURT: What was Nova's obligation to disclose
9 anything in terms of what Mr. Levin was trying to do to ACCB
10 (sic)?

11 MS. BARRY: They --

12 THE COURT: Did Nova have an obligation to contact
13 them and say, by the way, we understand this man's borrowing
14 money from you, did he tell you that he has an outstanding five
15 million loan with us, do they have that obligation?

16 MS. BARRY: Well, yes, Your Honor.

17 THE COURT: Where?

18 MS. BARRY: The liabilities that the individual has
19 when applying for another loan --

20 THE COURT: No, no. Does Nova have the obligation to
21 affirmatively contact ACCB and say, by the way, we're aware of
22 Mr. Levin is trying to borrow money from you, let me tell you
23 what he's doing over here?

24 MS. BARRY: Well, the issue is, Judge, that it was
25 Nova Bank directly who contacted ACBB to request the loan on

1 behalf of Mr. Levin.

2 THE COURT: All right.

3 MS. BARRY: They were in control of all
4 communications with ACBB, including all of the information
5 that was sent regarding Mr. Levin and his ability to get this
6 \$9 million loan. They did not disclose that Mr. Levin had
7 purchased or had borrowed from them \$5 million to purchase
8 their stock.

9 THE COURT: So now, you would include hat in the
10 evidence that you would proffer?

11 MS. BARRY: Yes, Your Honor.

12 THE COURT: And that's it?

13 MS. BARRY: Just one moment, Your Honor.

14 THE COURT: Go right ahead.

15 MR. EGAN: Can I speak to that?

16 THE COURT: Just one second.

17 (Pause)

18 MS. BARRY: Judge, there's a couple of things. One
19 is Mr. Hartline is telling the regulators that his ability to
20 raise the contingency still rests with Mr. Levin and he
21 continues on with that into October. And as of August he knows
22 that Mr. Levin is not in any kind of position, even without the
23 Ponzi or the Rothstein issues, that he's going to have a
24 difficult time getting the funds from Mr. Levin because, one,
25 it goes to the fact that Mr. Levin isn't going to put in any of

1 his own money, and two, that another bank isn't going to make a
2 loan to Mr. Levin. If that's the way Mr. Levin likes to do
3 things, the issue is at this point banks aren't giving him
4 loans that are going to assist with the plans of the defendants
5 here, which is to give -- get them -- get the capital in so
6 that they can get the TARP funds.

7 THE COURT: At what point does Mr. Hartline learn of
8 the demise of Rothstein?

9 MS. BARRY: Sometime after October 31st, Your Honor.

10 THE COURT: But what you're talking about predates
11 that time, correct?

12 MS. BARRY: Yes, that he new as of August that Mr.
13 Levin was not going to be in a position to even get a loan, and
14 that's an issue going forward and his good faith
15 representations to the regulators that Mr. Levin is still going
16 to put in this money.

17 THE COURT: And if Mr. Levin had chosen to --
18 Rothstein demise notwithstanding -- to go ahead and get up off
19 of his own assets by liquidation if he chose to do so, then
20 what?

21 MS. BARRY: But that's irrelevant because he wasn't
22 going to do that and so that --

23 THE COURT: Well, I don't think that that's the basis
24 for -- well, first of all, I heard Mr. Levin testify and I
25 heard he was reluctant to do certain things and how he did

1 business, but to say that he's not going to do something or he
2 would not have done something when it was his free will to
3 choose to do whatever he chose to do, I mean, there's a reason
4 how he got to \$400 million.

5 MS. BARRY: Well, that's another issue that we have,
6 Judge, that we're going to be raising about that \$400 million,
7 which I think is a mischaracterization of his wealth.

8 THE COURT: Well he said three -- two to three.

9 MS. BARRY: No, but regardless, Your Honor.

10 THE COURT: You know, interesting. Let me just say
11 this to you, as I'm looking through this list, as all this was
12 going on, I have two problems. One is Mr. Poliski, who was on
13 the witness stand from ten o'clock in the morning until well
14 later, and the crux of his testimony was I don't recall. And
15 I'm just concerned here in terms of the evidence that's being
16 presented that it needs to be direct, focused, relevant, and
17 probative of material issues in this case and not really just a
18 waste of time.

19 MS. BARRY: Your Honor, Mr. Poliski's testimony was
20 relevant and probative to a very important issue in this case.

21 THE COURT: Well, if it took him all that time to do
22 one thing we need to do -- consider this in terms of the
23 remainder of the witnesses that the Government is going to
24 present. Additionally, as again, I went through this as the
25 testimony was going forward, the vast amount of investments and

1 I don't mind saying the green bear jumped out the page at me.

2 I'm a golfer, what can I tell you.

3 (Laughter)

4 THE COURT: But in that county in West Virginia,
5 which is the third largest county in West Virginia, that
6 property is incredibly valuable. If he chose to liquidate that
7 asset alone, for example, and he chose to invest or liquidate
8 other assets, there's no question in my mind that he could
9 have raised sufficiently high amounts of money that he could
10 have procured a loan, had he wanted to do that. But that
11 depended upon his state of mind at the time. The way he chose
12 to do business could have varied from one day to the next. He
13 didn't even know whether his wife participated in certain
14 things. I just don't want to go out on this limb in terms of
15 the evidence that the jury has to consider, which is voluminous
16 already, in deciding a very important issue here by improper
17 inferences.

18 MS. BARRY: I don't know why nondisclosure is an
19 improper inference when that is the crux of the case, Your
20 Honor, is the nondisclosure.

21 THE COURT: Well again, you're -- but you started out
22 -- that's not how this began, okay. And in questioning we're
23 focusing down and narrowing down what the Government can
24 present. And I understand what you're trying to present at
25 this point in time and I'm willing to allow that.

1 MS. BARRY: Thank you, Your Honor.

2 THE COURT: But I'm putting parameters on that,
3 restrictions on that, not to go outside of the probative value
4 of the information. Now let me just hear from Mr. Egan.

5 MR. EGAN: Well, Your Honor, the fact of the matter
6 is is the application is signed by Mr. Levin and it's Mr. Levin
7 who asserts to the truth of the information on the application.

8 THE COURT: And I -- midway through my process I --
9 that's where I was, but for the Government's counsel to say
10 that it was Mr. Hartline who basically initiated this and tried
11 to facilitate this -- because my questioning was what
12 obligation would Nova have to disclose anything and the
13 Government's representation is that this was more Mr. Hartline
14 and Nova, if not as much as them, as it was Mr. Levin in trying
15 to obtain this loan.

16 MR. EGAN: And it will certainly be that he was
17 facilitating it by putting Mr. Levin in touch with ACBB and by
18 providing information to ACBB so that they can make a decision.
19 And --

20 THE COURT: So my question initially was what
21 obligation does Nova have, because my understanding was Mr.
22 Levin could go anywhere in the world he wanted to borrow money
23 and make that attempt. However, if the Government's response
24 is accepted, and I have to, that of all the banks in the world
25 it was this one and that's because Nova contacted them through

1 Mr. Hartline, then that's different. It's probative. It isn't
2 dispositive, but it's probative. It's relevant evidence.

3 MR. EGAN: But I would argue that what ACBB
4 ultimately did is not probative or relevant and, in fact, is
5 more prejudicial than relevant in terms of their decision not
6 to provide a loan.

7 THE COURT: I don't know that I disagree with that.
8 Let me hear from the Government.

9 MR. IGNALL: Your Honor, this actually goes into --

10 MR. EGAN: I thought we weren't two-teaming.

11 MR. IGNALL: Pardon?

12 MR. EGAN: I thought we weren't two-teaming.

13 MR. IGNALL: We are -- I'm going to two-team on this
14 one because this I think goes into the issue I wanted to raise
15 with Mr. Levin.

16 THE COURT: All right.

17 MR. IGNALL: But if the Court wants to one-team it on
18 this one I'm happy to sit back down.

19 MR. EGAN: No, that's all right.

20 MR. IGNALL: The argument -- this one piece about
21 ACBB denying the loan I think goes into a concern I have after
22 the cross examinations of Mr. Purvey (phonetic) and Mr. Levin
23 about the Rothstein investment, that we were very careful not
24 to call it a fraud, not to call it a Ponzi scheme based on the
25 Court's ruling. The cross examination, I'm afraid, has left a

1 misleading impression with the Court -- not with the -- well,
2 perhaps with the Court, obviously not, but with the jury that
3 this was a great investment and then, you know, something
4 happened on October 31st and it was not valuable any more, that
5 we've had questions about how much money Mr. Levin was making,
6 how much money he was making on the spread, what a great thin
7 this was, how rich Mr. Levin was, which is I think where this
8 ties back in to ACBB.

9 The only relevance I can see of the questions about
10 how rich and how lucrative all this was are to go to the intent
11 of Mr. Hartline and Mr. Bekkedam, meaning we've already had the
12 bank regulators say we want to know -- if money's borrowed we
13 want to know that it's borrowed from the bank because that's
14 relevant to our decision about whether that counts as new
15 capital. We would not have considered that. But that's not
16 enough for the Government to sustain its burden of proof.

17 We have to prove beyond a reasonable doubt that these
18 defendants had an intent to defraud, that they weren't just
19 mistaken in good faith. And what I take from these questions
20 is we think Mr. Levin is so rich he's good for the money, so it
21 wouldn't occur to me that I'd have to tell a federal regulator
22 that Mr. Levin borrowed the money from Nova Bank, even though
23 it later turns out that they should have. During the time that
24 Mr. Hartline was making representations to the federal
25 regulators he did not have any intent to defraud, he thought

1 this was totally fine.

2 Insofar as that relies on Mr. Hartline's and Mr.
3 Bekkedam's understanding of Mr. Levin's wealth, I think the
4 jury has a misleading impression right now, that he was
5 super-duper wealthy and something happened, when in fact, he
6 wasn't super-duper wealthy on June 30th. He thought he was,
7 but in fact, his hundreds of millions of dollars were in a
8 Ponzi scheme.

9 THE COURT: But if he thought he was how could Mr.
10 Hartline know otherwise?

11 MR. IGNALL: That's where I think it ties back in to
12 ACBB, that ACBB looks at the financials and even though they
13 see that he's worth hundreds of millions of dollars, they're
14 not willing to make a loan to him. So that means any
15 representation that Mr. Hartline makes after he learns that, he
16 now has additional knowledge about how creditworthy Mr. Levin
17 is.

18 THE COURT: Is there evidence that Mr. Hartline spoke
19 with ACBB's persons to -- who are in charge of, for example, a
20 loan committee, as to why they rejected Mr. Levin's loan?

21 MR. IGNALL: I believe that's true. That's more Ms.
22 Barry's issue. But my understanding --

23 THE COURT: I'm still trying to figure out how
24 somebody with a 709 credit score can borrow \$5 million, but
25 hey.

1 MR. IGNALL: But ACBB, as I understand it, only deals
2 with other banks. It's -- you and I could not go to --

3 THE COURT: Okay.

4 MR. IGNALL: -- ACBB and get a loan. Nova Bank has
5 to go to ACBB.

6 THE COURT: Does the jury know that right now?

7 MR. IGNALL: The jury does not know that. There's
8 been some talk of ACBB in a couple documents --

9 THE COURT: Correct.

10 MR. IGNALL: -- that we've discussed before the jury.

11

12 THE COURT: Correct.

13 MR. IGNALL: But I think the only issue that sounds
14 like it's left to resolve is the decision of ACBB to deny a
15 loan to Mr. Levin, which I think goes back to -- it does go to
16 his creditworthiness in July or August and it goes to what
17 these defendants know after that. It is not dispositive, but
18 it's certainly probative, it's certainly relevant. And then
19 the question becomes is there some danger of unfair prejudice
20 that substantially outweighs that probative value? And --

21 THE COURT: Does the Government feel that it does not
22 need to pare the evidence and present it in such a way that if,
23 for example, the loan was denied for some other reason the jury
24 could not wrongfully infer that it was denied for the reason
25 that the Government wants it to believe?

1 MR. IGNALL: I'm not sure I'm following.

2 THE COURT: Did I say wrongfully? Wrongly. Excuse
3 me.

4 MR. IGNALL: I'm not sure I'm following, Your Honor.
5 I apologize.

6 THE COURT: What if the people who are on the loan
7 committee at ACBB decided, for reasons other than what you're
8 suggesting, that they don't want to loan him this money?

9 MR. IGNALL: Well, I think Ms. Barry should address
10 that because I think she's more familiar with that.

11 THE COURT: All right.

12 MR. IGNALL: I was just trying to tie this back in to
13 --

14 THE COURT: Let me, before I hear Ms. Barry --

15 MR. IGNALL: -- Mr. Levin.

16 THE COURT: -- which I will, let me hear from Mr.
17 Egan, please.

18 MR. EGAN: This wouldn't be admissible in a civil
19 case. It's basically another entity looking at a situation and
20 making a decision based on its parameters. It's completely
21 irrelevant to whether -- why Nova --

22 THE COURT: Which is why I said I may be inclined to
23 allow some of the information to come out, but not all of it,
24 and specifically that they rejected the loan, because that
25 doesn't necessarily mean that they rejected it on that basis.

1 We all know that.

2 MR. EGAN: Thank you, Your Honor.

3 THE COURT: Now, unless they're going to testify and
4 you have witnesses to say this is exactly why, it's different.
5 Let me just hear from Mr. Duncan. Yes, sir?

6 MR. DUNCAN: Your Honor, briefly. And this is not
7 really our issue, but I do want to make sure that the facts are
8 clear. Mr. Levin has testified that even after the Ponzi blew
9 up we thought he was worth -- Mr. Egan's math was a little bit
10 off -- we thought he was worth \$140 million still. He had all
11 of these assets. Why -- I agree completely with what the Court
12 has just said. Look, when I went to refinance my house with
13 the same bank that had my mortgage they took me over the coals
14 to say this or that and I said to them, you know, I've already
15 got my mortgage with you. You know, banks make decisions for
16 all sorts of strange reasons. And to give the inference that
17 somehow Mr. Levin is not creditworthy from this person, Mr.
18 Sayre, coming in and saying on he denied him the loan. Well,
19 did you talk to each one of the committee members? Did they
20 say why? Is there something relevant? Is it relevant to --
21 did you know he was worth \$140 million even if he didn't have
22 the money from the Ponzi? It creates that inference that
23 somehow, as Mr. Egan has said, that Mr. Levin was not
24 creditworthy and Mr. -- well, other people should not have
25 relied on the idea that he was rich. Even the Government

1 regulators believed Mr. Levin was worth that amount of money.
2 They all -- you have all the e-mails back and forth, they've
3 got this very rich guy. Everybody through October 31st,
4 including Mr. Levin, thought he was worth a tremendous amount
5 of money.

6 THE COURT: All right, I understand that. Again --

7 MR. DUNCAN: And even afterwards, he was worth 140
8 million.

9 THE COURT: I appreciate that. Again, my concern is
10 simply this. Looking at the elements of the crime, is the
11 inference you want the jury to draw directly affecting the
12 element of the crime in terms of intent? And my concern is
13 because I don't know at this juncture by reason of any proffer
14 that you give or any pretrial motions for that matter, the
15 basis for the rejection, one, and two, that that basis was
16 articulated directly to Mr. Hartline. And it seems to me if
17 you cannot the evidence shouldn't be out there for them to
18 speculate as to what this is all about.

19 MS. BARRY: Your Honor, we would not have a
20 speculation as to why the loan was rejected. We have direct
21 evidence, not only from testimony, but Government's Exhibit 71
22 states why it was rejected.

23 THE COURT: What does it state?

24 MS. BARRY: It says the requested loan amount exceeds
25 the parameters of the loan program, the amount size of the

1 existing direct and contingent liability, and the negative
2 adjusted gross income.

3 THE COURT: And from that the jury can conclude guilt
4 beyond a reasonable doubt?

5 MS. BARRY: We're not asking them to decide guilt
6 beyond a reasonable doubt. The fact is there's a specific
7 reason why the loan is rejected.

8 THE COURT: Well, there's several reasons. And it
9 seems to me, as educated as I am, that I would need an
10 explanation for what those things are really saying.

11 MS. BARRY: Well, Mr. Sayre is here to explain what
12 those are. It wasn't -- it's not going to be unknown why they
13 rejected the loan. It's not going to be a speculation. Mr.
14 Sayre is going to be able to look at the notice of action taken
15 by his bank on rejecting the loan and there's going to be an
16 explanation on the rejection of the loan and he's going to be
17 able to explain what those are.

18 THE COURT: That the man's broke.

19 MS. BARRY: That's not what it's saying, that the man
20 is broke, because this is in August of 2009. What they're
21 saying is the bank is essentially going to say based on the
22 financials that they observed and the business that he was
23 heavily invested in, they did not provide him with a loan.

24 THE COURT: Yes. Okay.

25 MS. BARRY: And so then it goes to the intent of the

1 defendant. As of August of 2009, they knew, despite the fact
2 that he's got all of this money, how could he possibly be
3 rejected from any bank, he's got all of this money. But guess
4 what? He did. And so they knew that there may be a problem
5 going forward with him giving them the investment based on any
6 loan from any other bank, and not only that, Your Honor --

7 THE COURT: Counsel, I'm sorry, but I have a real
8 problem with, given how banks are or can be from one loan
9 committee to another, how you can conclude that if one bank
10 said no, that every other bank in the world would say no to Mr.
11 Levin.

12 MS. BARRY: Well that's not the argument, that every
13 other bank in the world would say no. This is --

14 THE COURT: But, you're saying that the jury has --
15 can conclude that if ACCB said no then Mr. Hartline had to
16 conclude that he was worthless financially and we're going to
17 loan him money anyway, hide that from the Government and,
18 therefore they're guilty beyond a reasonable doubt.

19 MS. BARRY: No, Your Honor, that is -- that's not the
20 -- that's not what we're asking the jury to do. But he is on
21 -- both defendants are on notice that ACBB, Your Honor, and I
22 think it has to be brought out what kind of bank ACBB is. And,
23 in fact, in May of 2009 Mr. Hartline wrote to all of the board
24 members saying if you want to purchase Nova stock as a board
25 member, go through ACBB, they have a program where you can

1 purchase bank stock. And that's a specific way that they are
2 touting among each other to do the stock purchase.

3 And, Your Honor, I think it's important to know that
4 ACBB is not your normal -- is not a bank that any other
5 depositor could go to, only people who have a vested interest
6 and ownership in other banks. It's a banker's bank. It's not
7 for the average Joe to walk in and say, hey, I'd like a loan.

8 They are a different kind of bank and I think it's
9 important for the jury to know that they had gone out, sought
10 the half investment. They had already -- Your Honor, they had
11 already hidden the loan from the regulators. They had already
12 hidden that they provided a loan to Mr. Levin. They need to
13 get out of trying to hide that and so they went to ACBB and
14 said, you know, we want -- please give him half of the \$18
15 million which is nine and that way it's not a lie, it's not a
16 lie that we told the regulators he was going to borrow half
17 because we're going to ACBB and we're going to get half.

18 But the problem is, Judge, he doesn't get the half.
19 He doesn't get the \$9 million loan that they were planning on.
20 And once the plans start to unravel, it goes further and
21 further to what was up here and what they were thinking and,
22 Judge, that is relevant. It's not relevant as to whether or
23 not George Levin could have gotten his own money and invested.
24 That's not the point. The point is what are these defendants
25 doing knowing that George Levin is not going to put in his own

1 money?

2 MR. EGAN: Your Honor, there's no evidence that they
3 didn't know what George Levin was going to do. We've heard
4 George Levin's testimony that he could have done and knew he
5 was on the hook to do up as late as October. All this is is an
6 attempt to get evidence in from another bank that they denied
7 Mr. Levin credit. It's all it is. And its prejudice far
8 outweighs its probative value and apparently the Government
9 doesn't ever take a ruling as a ruling and we'll argue until
10 noon about this but the bottom line is they can't change the
11 facts.

12 And the facts are they're calling this person to say
13 we were asked about this loan, we received an application and
14 by the way, it's not Mr. Hartline's application, it's signed by
15 George Levin and the information is provided by George Levin.
16 They received the loan and they denied the loan. And Your
17 Honor asked what were the reasons. The first reason is
18 requested loan amount exceeds the parameters of the loan
19 program. That has nothing to do with anything we're here
20 about.

21 THE COURT: Just stop right there. What does that
22 mean?

23 MS. BARRY: Mr. Sayre would testify, Your Honor, that
24 Brian Hartline contacted him for a \$9 million loan and he was
25 advised at that time by Mr. Sayre \$9 million is a little more

1 than, you know, we would give and Mr. --

2 THE COURT: Why?

3 MS. BARRY: Pardon me?

4 THE COURT: Why is \$9 million a little more than we
5 would give?

6 MS. BARRY: I think their loan amount may have been
7 four or five million at the excess -- at the upper limits of
8 what they would lend. But Mr. Hartline --

9 THE COURT: All right, now just stop right there.
10 Just stop right there please. Nine is how much more than they
11 would normally lend?

12 MS. BARRY: Your Honor, I would have to go back to
13 see exactly what -- I believe it was above whatever their
14 lending limit was.

15 THE COURT: All right, now, accepting that as true,
16 he wanted nine. They could only go to four. Is there evidence
17 that there was an exchange between Mr. Sayre, Mr. Levin and
18 presumably Mr. Hartline the most we could do is four? Now
19 let's begin the discussion.

20 MS. BARRY: Yes.

21 THE COURT: There is evidence of that?

22 MS. BARRY: Yes.

23 THE COURT: Conversation?

24 MS. BARRY: Yes.

25 THE COURT: And then after that four was

1 communicated, are we talking about the remainder of the reasons
2 for denial what you've articulated based on a \$4 million
3 application or a \$9 million application?

4 MS. BARRY: Your Honor, I believe the evidence will
5 be that Mr. Hartline, when Mr. Sayre told Mr. Hartline that
6 nine exceeded their lending limit, Mr. Hartline said well,
7 maybe -- whatever you can do.

8 THE COURT: All right.

9 MS. BARRY: Whatever you can do.

10 THE COURT: All right.

11 MS. BARRY: If it's a million, if it's two, it's
12 three, if it's a four, just whatever you can do. So they
13 didn't actually readjust the requested amount but they asked,
14 you know, look at him and just provide what -- the loan amount
15 that you would give him.

16 THE COURT: And then they came back and said we won't
17 even give him \$5?

18 MS. BARRY: Correct.

19 THE COURT: Because?

20 MS. BARRY: Because --

21 THE COURT: Four million downward to five, the reason
22 why is?

23 MS. BARRY: The amount size of existing, direct and
24 contingent liabilities and the negative adjusted gross income.

25 MR. EGAN: You missed the first part of the answer

1 which is the requested loan amount exceeds the parameter of the
2 loan program.

3 MS. BARRY: No, he said --

4 THE COURT: No, that's

5 MR. EGAN: That's on rejection.

6 THE COURT: No, no, I know that. We've already
7 passed that. So, therefore, their determination that he was
8 not credit worthy for \$4 million, not nine because nine is out
9 of the question anyway, but for \$4 million is communicated to
10 Mr. Hartline. Does Mr. Hartline (1) have any obligation to
11 reveal that to the regulators?

12 MS. BARRY: The information from -- about his non
13 creditworthiness?

14 THE COURT: Yes.

15 MS. BARRY: I don't think he has an obligation to
16 advise the regulators of the non creditworthiness. I think --

17 THE COURT: That's question number 1. Question
18 number 2 is accepting that Mr. Hartline now knows that a bank
19 has said he is not credit worthy, it's the Government's
20 position that now Mr. Hartline has what obligation toward the
21 regulators or TARP?

22 MS. BARRY: He's on notice, Your Honor, that Mr. --
23 that they are more than -- that it's becoming more of a
24 possibility that Mr. Levin is not going to make this investment
25 but he continues to tell the regulators that they're expecting

1 this investment from Mr. Levin.

2 THE COURT: And that conversation eliminates any
3 possibility of Mr. Hartline continuing to try to develop some
4 other alternative with Mr. Levin?

5 MS. BARRY: Well, I think he stops doing that, Your
6 Honor, once Mr. Levin it's clear that he does not have -- the
7 Ponzi scheme is uncovered so he goes to other sources and then
8 they start doing loans with other individuals.

9 THE COURT: Was that permissible?

10 MS. BARRY: No. Well, it's permissible to give him a
11 loan. It's not permissible to call it capital and tell the --

12 MR. EGAN: Your Honor, that's not been established.

13 THE COURT: Counsel, wait a minute please.

14 MR. EGAN: I'm sorry.

15 THE COURT: She's on the floor. Go right ahead.

16 MS. BARRY: Your Honor, the issue in this case is
17 that they made loans to individuals who then used it to
18 purchase stock and they did not disclose that it was the bank's
19 own money that it was being used to purchase stock and capital.

20 THE COURT: Patently clear. My only question is in
21 terms of what you're proffering regarding Mr. Sayre --

22 MS. BARRY: Yes.

23 THE COURT: -- is it acceptable, admissible pursuant
24 to 403 based upon everything that I know about this case at
25 this point in time so as not to confuse the jury, allow for

1 improper inferences toward guilt beyond a reasonable doubt?
2 The chips fall where they may. The evidence is the evidence.
3 If they're found guilty, jury says they're guilty by competent
4 evidence, so be it. But they are both entitled to a fair
5 trial.

6 MS. BARRY: Absolutely, Your Honor, and so is the
7 Government.

8 THE COURT: Absolutely.

9 MS. BARRY: And so this is evidence -- we did not say
10 this evidence is dispositive but it is relevant, it is
11 probative and to the extent there is no misimpression on the
12 jury that of why the loan was denied and to the extent that
13 this was the only bank that they sought for Mr. Levin to get a
14 loan, then you can argue -- it could be argued any way -- any
15 inference can be made from that.

16 THE COURT: All right, this is what I'm going to do.
17 Let me just hear from Mr. Egan. Then I'm going to tell you
18 what I'm going to do. Mr. Egan?

19 MR. EGAN: Barely relevant and far more prejudicial
20 than probative.

21 THE COURT: All right, Mr. Duncan?

22 MR. DUNCAN: Your Honor, just if I may? I'm not in
23 any way impugning anything that's been said here but I've been
24 reading through the 302s or the memorandums. There's nothing
25 about a conversation with Mr. Hartline and Mr. Sayre about

1 well, let's reduce it to 4.5. And, Your Honor, as a matter of
2 logic, it's not there because they're rejecting a \$9 million
3 loan. The loan was never in any way modified. They're saying
4 this \$9 million loan is outside our parameters. There's
5 nothing about oh, well, what about 4.5, what about one?
6 There's nothing about that at all, Your Honor.

7 THE COURT: That was my last area to cover and that
8 is I will allow it but it's going to be conditioned upon it
9 being pared in such a way that the jury would have an accurate,
10 and I mean accurate understanding of the parameters here, the
11 ceiling. If he's trying to get nine million and the rule is
12 you can't get more than four, then that five million is wholly
13 irrelevant. It's wholly irrelevant. And unless you're going
14 to suggest that there is a direct conversation between Mr.
15 Hartline and whomever is at ACCB, that hey, don't worry about
16 the ceiling, we want nine because, if you can't do that, then
17 it can't come in.

18 Additionally, look exactly what is going to be said
19 by the witnesses, to be what I've questioned you about. That's
20 what is going to be admissible. The kitchen sink being thrown
21 in will not be allowed and improper inferences will not be
22 allowed.

23 MS. BARRY: Yes, Your Honor, I understand your
24 position and I guess just for our edification, what is the
25 improper inference?

1 THE COURT: Well, if you want to start with he tried
2 to get \$9 million and the \$9 million was rejected because he
3 was not credit worthy I think is an improper inference about
4 why the loan was rejected if you're ultimately are going to
5 argue that the loan was rejected because he was not credit
6 worthy and that Mr. Hartline knew that and then the snowball
7 starts to run down the hill about Mr. Hartline's intent. If
8 there's a ceiling that says you can't borrow more than \$4
9 million and then there's negotiation around four and below,
10 that's different.

11 MS. BARRY: Yes, Your Honor.

12 THE COURT: But you're talking about adding up
13 cumulatively all the monies that they're going to need to be
14 sufficiently capitalized and that five million is off the
15 table. It's improper to consider that. I mean if there's a
16 ceiling on a credit card and you try to charge more, you can't
17 charge more, period.

18 MR. IGNALL: Your Honor, I think we understand the
19 question. I just want to make sure with respect to Mr. Levin's
20 redirect that I'm not going to go beyond the Court's ruling.

21 THE COURT: Well, I want to go back to what Mr.
22 Duncan mentioned in terms of the Government's ability to have a
23 witness testify to this not -- well, because -- I appreciate
24 the proffer. I can't imagine that somebody was going to be
25 asking in the MOI questions like I've just asked with that kind

1 of specificity, but if you got witnesses who can say those
2 things, so be it. I think that's what Mr. Duncan was
3 suggesting.

4 MR. DUNCAN: My point, Your Honor, is there's nothing
5 in the MOI about a conversation between Mr. Hartline --

6 THE COURT: That's my point.

7 MR. DUNCAN: It just isn't there. Now, maybe they're
8 going to -- he's going to say Brian tried to negotiate it down
9 but we ought to hear that in the proffer --

10 THE COURT: Agreed.

11 MR. DUNCAN: -- Mr. Hartline, I'm sorry.

12 THE COURT: Agreed.

13 MR. IGNALL: Your Honor, I think we'll talk to Mr.
14 Sayre before he goes on and we can raise that with the Court.
15 My concern is with Mr. Levin's redirect --

16 THE COURT: All right.

17 MR. IGNALL: -- and I want to make sure that -- well,
18 there are two things, but this is -- it kind of goes slightly
19 together. With respect to ACBB, my concern is we've seen -- I
20 believe Mr. Egan showed it and Mr. Duncan may have Exhibit 64
21 to Mr. Levin.

22 UNIDENTIFIED SPEAKER: 67.

23 MR. IGNALL: I'm talking about Exhibit 64. And if we
24 could bring that up on the screen, Agent Blair (phonetic)?
25 It's, I believe, the sixth page. That page. If we can blow up

1 the top? There are questions about this. The inference, I
2 think, that the defendants wanted the jury to draw was that
3 there's no misleading of regulators because here it says half
4 the funds are borrowed.

5 As it stands without any mention of ACBB, that would
6 leave a misleading impression. I understand the Court's ruling
7 but I think it's also important regardless of the reason to
8 show that that half from borrowed funds is the nine million
9 that Nova Bank requested from ACBB and that Mr. Levin did not
10 get. So this does not include loans from Nova Bank. So I just
11 want to make sure that if I get Mr. Levin to say --

12 THE COURT: But the half --

13 MR. IGNALL: -- I didn't get the loan because there
14 was --

15 THE COURT: The half borrowed funds, that's nine
16 million.

17 MR. IGNALL: Yes, and that's exactly the amount of
18 the ACBB loan request.

19 THE COURT: All right. That's already in evidence,
20 is it not?

21 MR. IGNALL: No. There was -- I think -- I don't
22 remember which defense lawyer showed Exhibit 67 to Mr. Levin
23 which is the application in which part of the application to
24 ACBB --

25 MR. EGAN: That question was withdrawn, Your Honor.

1 MR. DUNCAN: That's correct, Your Honor. That was me
2 and I did withdraw the question.

3 MR. IGNALL: But that -- those go together because
4 the inference here I think would be --

5 THE COURT: Was the question answered?

6 MR. DUNCAN: No, it was not, Your Honor.

7 THE COURT: So --

8 MR. IGNALL: Okay, the questions have been out there
9 about this half borrowed and I think I need to make it clear
10 with Mr. Levin the only loan he had was from Nova Bank for five
11 million and that he did make an application for nine million
12 through Nova Bank to ACBB and that he didn't get it and it's --

13 THE COURT: Without the inference that he was not
14 credit worthy?

15 MR. IGNALL: That's where I -- I anticipated that
16 with Mr. Sayre we would get into the evidence about credit
17 worthiness for a different reason.

18 MR. EGAN: Your Honor, may I -- I hate to do this but
19 I think I may have solved the problem.

20 THE COURT: You what?

21 MR. EGAN: I think we may have solved the whole
22 problem here.

23 THE COURT: Great.

24 MR. EGAN: I mean if Mr. Levin speaks -- if Mr. Levin
25 says yes, I applied for a loan to ACBB for nine million, I

1 didn't get it, then the evidence that he applied for the loan
2 of nine million is in. It's admissible, it's relevant and he
3 didn't get it is in and that's admissible and relevant I
4 suppose. And we don't need Mr. Sayre to testify about any of
5 the reasons why or wherefor because they're all irrelevant.

6 THE COURT: Ms. Barry?

7 MR. IGNALL: Well, no, I was going to say for our
8 purposes of Mr. Levin, I think we could agree to ask those
9 questions and then reserve -- because I understand the Court's
10 ruling with that there are other areas that we could talk to
11 Mr. Sayre about and then after Mr. Levin testifies, revisit how
12 far -- after we talk to Mr. Sayre, we propose to go.

13 THE COURT: It sounds reasonable. After he
14 testifies, we'll talk about it again. We'll revisit it.

15 MR. EGAN: Fine, Your Honor.

16 THE COURT: All right. All right, give me -- yes,
17 sir?

18 MR. IGNALL: I have one other -- I was standing up
19 not just to step on Ms. Barry's toes but because it segued back
20 into the issue I want to raise with Mr. Levin.

21 THE COURT: Okay.

22 MR. IGNALL: And this is all I think tied together
23 about how fabulously wealthy Mr. Levin was as of June 30 that I
24 think the jury has been left with a misleading impression
25 because we've been very careful not to use the words Ponzi

1 scheme or fraud with respect to the Rothstein investment.

2 THE COURT: Do you believe, not the jury, but do you
3 believe that Mr. Levin was credible when he reduced the amount
4 by correcting counsel's question as to his net worth at or
5 about that time when he talked about (1) it wasn't that much
6 when counsel asked something about 400 million and (2) he said
7 he spoke to liquidated assets, he spoke to investments and he
8 spoke to, as I recall, a variety of income sources on a balance
9 sheet if you will and that it wasn't all like it looked? But
10 in the end I thought he said approximately 100, 125 million was
11 his worth. Am I wrong or right about that?

12 MR. IGNALL: I don't remember the exact number.

13 MR. DUNCAN: Your Honor, he said that he was asked by
14 Mr. Egan how much he said he lost about two-thirds of it and
15 then we did the math and Mr. Egan came up with 30 million, but,
16 you know --

17 THE COURT: All right.

18 MR. IGNALL: That's a different issue. There are two
19 issues here. But that I'm going to clarify and redirect
20 regardless. Because of the guarantees that Mr. Levin had, it
21 actually wiped him out and he ended up in bankruptcy so
22 whatever assets he had he was going to lose in bankruptcy
23 because of demands on those guarantees. So I think effectively
24 he's probably in for more than 100 percent when it went bad or
25 when -- my concern is about the inference as of June 30th as to

1 how fabulously wealthy he is. We were going to leave it with
2 he understood that he had this investment, but the more
3 detailed questions we've had to make it look like he's this
4 super rich guy I think leaves a misleading impression.

5 THE COURT: I understand your point and I agree.

6 MR. IGNALL: So I would like to be able to inquire
7 about, and this may be tricky, maybe the best way to do it is
8 to have Mr. Levin on the stand and we can instruct him in terms
9 of the parameters because I don't want to be speaking to Mr.
10 Levin while he's in cross examination or after cross
11 examination without counsel present, that we could maybe get
12 on to and I could fashion my questions that in fact although he
13 thought he had \$300 million, he later learned that it wasn't
14 worth much of anything on June 30th.

15 THE COURT: As long as you can demonstrate that
16 there's a nexus between that amount of money and what was in
17 Mr. Hartline or Mr. Bekkedam's mind.

18 MR. IGNALL: Well, yes and no, Your Honor. The
19 problem with that is when we left it at he was invested in this
20 thing and it turned out not to be valuable on October 31st,
21 that was that. But when we have questions about --

22 MR. EGAN: I'm sorry, Your Honor --

23 MR. IGNALL: I don't know that I was done.

24 THE COURT: Mr. Egan, no, absolutely not. He has the
25 floor. He's addressing the Court.

1 MR. EGAN: I apologize, Your Honor.

2 THE COURT: That's all right. Go ahead.

3 MR. IGNALL: I'm sorry, Your Honor. I was a little
4 snippy there. When we left it at that, that's where we left
5 it. When we had questions about his planes and his, you know,
6 fabulously wealthy lifestyle and specific questions about how
7 valuable this investment was, that he's making this great
8 spread on the investment, he's promising, you know, people 12
9 percent, he's getting 20 percent back himself, he's
10 guaranteeing that 12 percent so when, in fact --

11 THE COURT: Excuse me one second.

12 (Court spoke on another matter)

13 THE COURT: I'm sorry, counsel.

14 MR. IGNALL: -- when, in fact, and this is where it
15 gets misleading, because Mr. Levin had guaranteed all this if
16 this indeed this turned out to be as it was a Ponzi scheme, Mr.
17 Levin is potentially worth less than zero. So we've left a
18 misleading impression that he has this \$300 million asset and
19 he's getting this tremendous, you know, spread on the return.

20 THE COURT: So why could you not ask him that?

21 MR. IGNALL: I think I should be able to ask him
22 that. My concern was the Court has already ruled that we can't
23 introduce evidence that the Rothstein investment was a Ponzi
24 scheme and I understand that.

25 THE COURT: Well, his testimony has gotten so close

1 to that, I think the jury can infer that that was, you know, a
2 jumping off the cliff if you will. I don't see that there is a
3 problem whether it's through cross or redirect to simply
4 demonstrate from the witness' own mouth that at the end of the
5 day at a time certain, that's very important, at a time certain
6 that's relevant to the potential loans and what should be
7 disclosed to regulators in this case, he had a net worth of X.
8 And he doesn't have to say too much more than that from what's
9 already come out in the case.

10 MR. EGAN: May I now, Your Honor?

11 THE COURT: No. Mr. Ignall is not totally done in
12 terms of this exchange.

13 MR. IGNALL: Yeah, I think there are two different
14 issues here.

15 THE COURT: All right.

16 MR. IGNALL: And one, I think, I was going to get
17 into on redirect, just what he understood he was worth --

18 THE COURT: All right.

19 MR. IGNALL: -- after October 31st.

20 THE COURT: All right.

21 MR. IGNALL: I'm going back to June 30th. I just
22 want to be able to correct -- and the jury may have already
23 inferred what seems to be worth all this money on one day and
24 is worth nothing another.

25 THE COURT: But you have a right -- you have a right

1 to clear that.

2 MR. IGNALL: But I want to make it clear that Mr.
3 Levin understood he had \$300 million but he later found out
4 that he didn't really as of June 30th.

5 THE COURT: You could do that too. Yes, sir?

6 MR. DUNCAN: Your Honor, if I may and maybe I'm
7 missing the point, but the relevant things are what in the
8 defendants' mind and everybody else's mind as to what they
9 believed.

10 THE COURT: I've been saying that all along.

11 MR. DUNCAN: Mr. Levin, if we did an accounting on
12 him on October 31st, I don't know what we would find but we
13 know what he believed on October 31st and there's no evidence
14 that anybody else didn't also believe that he was still
15 fabulously wealthy even after the Ponzi crumbled. Later that
16 the guarantor showed that, you know, he had owed other money is
17 completely irrelevant after October 31st.

18 THE COURT: I don't know what Mr. Ignall is going to
19 elicit from the witness. His proffer is he wants to be able to
20 on recross, redirect, excuse me, to clear up any
21 misunderstanding as to the witness' testimony on direct or
22 cross in response to what were you worth at a point in time and
23 he's allowed to do that. And he can, independent of that
24 witness' testimony, he can if he has the evidence, link it up
25 if you will in terms of what's in the defendants' mind.

1 MR. DUNCAN: Understood.

2 THE COURT: If he doesn't, he doesn't. And you
3 obviously are going to argue that to the jury.

4 MR. DUNCAN: Understood.

5 THE COURT: All right, now, Mr. Egan?

6 MR. EGAN: And my concern, Your Honor, is based on
7 Mr. Ignall's argument, the sense I get is what he's trying to
8 show is that in June of 2009 Mr. Levin wasn't really worth that
9 much money and there isn't a shred of evidence that any time
10 before October or even after October 31st but certainly not
11 before October 31st that there's any reason why my client had
12 any reason to believe that he was not worth what he says he is
13 on those pieces of paper. And to infer otherwise when Mr.
14 Ignall knows quite well that otherwise is not true is improper.

15 THE COURT: Let me just hear his response.

16 MR. IGNALL: And that may have been a fine argument
17 before we had all these questions about how rich Mr. Levin was.
18 Those were never tied back to Mr. Hartline knowing that so now
19 we've left a misleading impression.

20 THE COURT: All right, I'll allow it. If the
21 Government wishes to pursue that in that manner, the defense is
22 certainly not going to be precluded from arguing the net worth
23 of that information against the backdrop of knowledge, notice
24 to the defendants and why would we argue and present it if it
25 had anything to do with anything. You know, I know, but I

Musser - Direct/Ignall

45

1 don't want to teach you. I'm saying that just simply for the
2 record and why the Court's allowing the evidence is admissible
3 but the weight of the evidence is going to be up to the jury to
4 decide.

5 MR. EGAN: Thank you, Your Honor.

6 MR. IGNALL: And just so I don't step on anything
7 that I'm going to regret later, may I ask for a -- maybe excuse
8 the jury after Mr. Levin's cross so that perhaps I can inquire
9 with counsel present just so we can agree on that area?

10 THE COURT: It would be very wise to do that.

11 MR. IGNALL: Okay.

12 THE COURT: All right.

13 MR. IGNALL: Thank you, Your Honor.

14 MR. DUNCAN: Your Honor, before we bring the jury in,
15 could I have two minutes?

16 THE COURT: Absolutely.

17 MR. DUNCAN: Thank you.

18 THE COURT: Take three.

19 MR. DUNCAN: Thank you, Your Honor. May I be
20 excused?

21 THE COURT: Yes, sir.

22 MR. DUNCAN: Thank you, Your Honor.

23 (Audio off)

24 THE COURT: You may continue.

25 MR. IGNALL: Thank you. The Government calls Hilary

Musser - Direct/Ignall

46

1 Musser.

2 COURTROOM DEPUTY: Please raise your right hand.

3 HILARY MUSSER, GOVERNMENT'S WITNESS, SWORN

4 COURTROOM DEPUTY: Please be seated.

5 THE WITNESS: Thank you.

6 COURTROOM DEPUTY: Please state your full name and
7 spell your last name for the record.

8 THE WITNESS: My name is Hilary Grinker Musser,
9 M-u-s-s-e-r.

10 THE COURT: You may proceed.

11 MR. IGNALL: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. IGNALL:

14 Q Ms. Musser, in what city and state do you currently live?

15 A West Palm Beach, Florida.

16 Q And how long have you lived in Florida?

17 A Approximately ten years.

18 Q And where did you live before you moved to Florida?

19 A Bryn Mawr, Pennsylvania.

20 Q When you were living in Bryn Mawr, Pennsylvania, did you
21 at any point meet someone known as Barry Bekkedam?

22 A Yes.

23 Q Approximately when did you meet Mr. Bekkedam?

24 A Somewhere around possibly the late 90s, early 2000.

25 Q Do you see Mr. Bekkedam here in the courtroom?

Musser - Direct/Ignall

47

1 A I do.

2 Q And can you identify him by where he's sitting and what
3 he's wearing?

4 A He's sitting to the third to the -- with the gentlemen
5 over there and he's wearing a light blue tie and a dark gray
6 suit.

7 MR. IGNALL: May the record reflect that the witness
8 has identified Mr. Bekkedam?

9 THE COURT: The record shall so reflect.

10 Q All right, when you first met Mr. Bekkedam, did you have
11 any discussions with him about what business he was in?

12 A I knew he was in the investment business basically.

13 Q And did you know what the name of his business was?

14 A Ballamor Capital Management.

15 Q At some point did you talk -- did Mr. Bekkedam talk to you
16 about investing with Ballamor?

17 A Yes.

18 Q Do you remember approximately when that was?

19 A Yes, around 2005.

20 Q All right, and did you have money to invest at that point?

21 A I did.

22 Q About how much money did you have?

23 A About \$5 million.

24 Q Okay, and did you speak with Mr. Bekkedam about investing
25 that with Ballamor?

Musser - Direct/Ignall

48

1 A Yes, I did.

2 Q Did Mr. Bekkedam tell you about whether he had -- how much
3 money he had under management?

4 A Yes, he did.

5 Q What did he say?

6 A Two to \$3 billion.

7 Q And did you, in fact, invest with Mr. Bekkedam?

8 A Yes, I did.

9 Q And did Mr. Bekkedam have any discretion over where to
10 invest that money?

11 A He had 100 percent discretion.

12 Q After you invested that first \$5 million did Mr. Bekkedam
13 ever seek any further investments from you?

14 A Yes, he did.

15 Q Going back to about 2005, did you have a line of credit at
16 any bank?

17 A Yes, I did.

18 Q And what bank was that at?

19 A I was with PNC Bank in Philadelphia.

20 Q And did you have a discussion with Mr. Bekkedam about that
21 line of credit?

22 A Yes, I did.

23 Q What was that discussion?

24 A I did not want to transfer my funds over to him unless he
25 could also extend the same line of credit that I had at the

1 same interest rate.

2 Q Did you talk to Mr. Bekkedam about using the line of
3 credit to invest with Ballamor?

4 A Well, I wanted to use the line of credit just as a safety
5 net for anything but he said I should use the line of credit to
6 invest because it would be an arbitrage.

7 Q Did he tell you what that meant?

8 A Yeah, I had to ask that question, so yes, he did, that I
9 would -- he would earn more money than the interest rate so it
10 would be a good idea to use the line of credit and give it to
11 him to invest.

12 Q And did he talk to you about moving the line of credit
13 from PNC to anywhere else?

14 A Yes, he did. He didn't talk about it. He insisted.

15 Q Where did he suggest that you move it?

16 A To Nova Bank.

17 Q And what did he -- how did he describe his relationship
18 with Nova Bank at that time?

19 A That he owned it.

20 Q Did he talk to you about what influence he had over Nova
21 Bank at that time?

22 A He said on many occasions that he controlled the bank.

23 Q Did you move your line of credit?

24 A Yes, I did.

25 Q And did that line of credit stay open at Nova through 2009

Musser - Direct/Ignall

50

1 or later?

2 A Yes, it did.

3 Q Did Mr. Bekkedam ever tell you what official role he had
4 at the bank?

5 A Yes, he did. He said he was the chairman.

6 Q At some point did he tell you whether he stopped being the
7 chairman?

8 A Many years later he mentioned in passing that he was no
9 longer the chairman for this or that reason but that he still
10 controlled the bank so it didn't matter.

11 Q Going to about 2008 or 2009 did Mr. Bekkedam ever suggest
12 to you that you invest in Nova Bank itself?

13 A He had asked me to invest in Nova Bank, yes.

14 Q And did Mr. Bekkedam talk about whether or not he was
15 raising money from other investors into Nova Bank?

16 A Yes, he did.

17 Q And what did he say about that?

18 A That he needed to raise capital for the bank to prop it up
19 so that the deposits were big enough so that he could receive
20 the TARP funds.

21 Q Did he tell you what the TARP funds meant?

22 A Well, I didn't know what that meant either so he did
23 explain it to me.

24 Q As best you recall, how did he explain what the TARP funds
25 meant?

1 A Government assisted money to help keep the bank running,
2 that there were funds available for banks to keep them going.

3 Q Did he say whether there's anything that he needed to do
4 in order to get that funding?

5 A Yeah, he needed to get the assets of the bank up to a
6 certain level, therefore, he was looking for investors in the
7 bank and looking at me and other Ballamor clients to put money
8 in.

9 Q Did he ever say anything about whether or not there were
10 any deadlines to meet with respect to this TARP funding?

11 A Yes, he did.

12 Q And what did he say?

13 A Well, I know that at the time he was on a short leash. It
14 was a matter of a couple of months or a few weeks. It
15 depended. He talked to me about it several times so the time
16 frame changed as he got closer.

17 Q And did he ever talk to you about whether or not there
18 were any government requirements in particular that the bank
19 had to meet?

20 A Yes.

21 Q And what did he say about that?

22 A As best I can recall, balance between the assets and the
23 bank and the amount of money they were getting. Not being in
24 the banking industry, I'm not sure I totally understand it but
25 I do recall specifically him saying that the balance sheet had

1 to look at certain way for them to receive the funds.

2 Q Did you ever invest in Nova Bank?

3 A I did not.

4 Q Have you ever heard of someone named George Levin?

5 A I have.

6 Q Let me back up. Did Mr. Bekkedam ever say whether other
7 Ballamor clients were investing in Nova Bank?

8 A Yes, he did.

9 Q Have you ever heard of someone named George Levin?

10 A Yes, I have.

11 Q And from whom did you first hear about George Levin?

12 A Mr. Bekkedam.

13 Q And what business did you understand Mr. Levin to be
14 involved in?

15 A He was described as a wealthy investor who had started
16 some kind of a fund that was investing in legal settlements.

17 Q Do you remember the name of that fund?

18 A I do.

19 Q And what was the name of that fund?

20 A The Banyon Income Fund.

21 Q And did you speak to Mr. Bekkedam about the Banyon Income
22 Fund?

23 A Yes, I did.

24 Q And did he recommend that you invest in that?

25 A More than once.

1 Q Not the specifics, did you end up investing in the Banyon
2 Income Fund?

3 A Yes.

4 Q Did you ever learn whether Mr. Levin had any relationship
5 with Nova Bank?

6 A Yes, I did.

7 Q And did you ever discuss that with Mr. Bekkedam?

8 A Yes, I did.

9 Q And what is it you discussed with Mr. Bekkedam?

10 A He said that George Levin was making a sizable investment,
11 \$5 million, in the bank and that was going to I believe get
12 them to the goal line of being propped up enough to get their
13 TARP funds.

14 Q Who used, if anyone, the term propped up?

15 A He did.

16 Q And how did he say that? How did that come up?

17 A Propped up --

18 Q Okay.

19 A -- in the context of the conversation that this money
20 needed to come into the bank to put up the balance sheet, prop
21 up the balance sheet to be at a number that was whatever number
22 you had to reach in order to get these government-assisted
23 funds.

24 Q Did he ever talk to you about why Mr. Levin was doing
25 this?

1 A To help him because they were good friends.

2 Q And at some point did you learn whether or not Mr. Levin
3 had a borrowing relationship with the bank?

4 A I do not believe that Barry personally told me but I read
5 it at a later date.

6 Q And did you discuss that with Mr. Bekkedam after you read
7 that?

8 A I did.

9 Q And tell us about that discussion.

10 Q It was in one of the documents for the Banyon Income Fund
11 and I called him because it looked -- it was --

12 MR. ENGLE: Objection, Your Honor. The witness --

13 THE COURT: Sustained.

14 MR. ENGLE: Thank you.

15 Q Did you have a discussion with Mr. Bekkedam about Mr.
16 Levin borrowing money from the bank?

17 A Yes.

18 Q And what did you discuss with Mr. Bekkedam about Mr. Levin
19 borrowing the money?

20 A I asked him why.

21 Q And what did he say?

22 A That this was the transaction he did in order to get the
23 TARP funds.

24 MR. IGNALL: May I have one moment, Your Honor?

25 THE COURT: Yes.

1 MR. IGNALL: Nothing further. Thank you.

2 CROSS EXAMINATION

3 BY MR. SCHWARTZ:

4 Q Good afternoon, Ms. Musser.

5 A Good afternoon.

6 Q All right, today you are telling us that -- first off all,
7 you never invested any money in Nova Bank, is that correct?

8 You never bought any stock?

9 A No, but my ex-husband did.

10 Q He bought it in 2002 when the bank was formed through
11 Ballamor?

12 A I don't recall the year.

13 Q Did you personally ever buy any stock in Nova Bank?

14 A No, I did not.

15 Q Okay, and you wouldn't buy stock in Nova Bank because you
16 weren't going to invest in a bank that was lending money to
17 you, is that correct?

18 A Well, there were several reasons why I didn't.

19 Q And one of the reasons that you didn't invest in Nova Bank
20 is that you were borrowing money from Nova Bank and you weren't
21 ever going to invest in a bank that you were borrowing money
22 from, is that fair to say?

23 A The main reason I didn't invest is because my ex-husband
24 told me not to.

25 Q Ma'am, did you not invest in Nova Bank because you weren't

1 going to invest in a bank that was already lending you money?

2 A Well, I'm sure that was one of the things that passed
3 through my mind but it wasn't the main reason.

4 Q Well, it was one of the things you told the federal agents
5 when they met with you in October of 2015, isn't that correct?

6 A I just said it was one of the reasons but there were many
7 reasons.

8 Q The only reason that you told the federal agents about why
9 you didn't invest in Nova Bank is that you were not going to
10 invest in a bank that was going to lend you money, that was
11 lending you money?

12 A Well, that is one of the reasons. I'm answering your
13 question.

14 Q And that's the only reason you told the federal agents
15 when they interviewed you, is that correct?

16 A I don't recall every word that I said on an interview many
17 years ago but that would have been one of my reasons, correct.

18 A All right, and now today you're saying that even though
19 you didn't invest in the bank, today you're saying that Barry
20 Bekkedam talked to you about investing in the bank, is that
21 right?

22 A (No audible response).

23 Q It's your testimony that he asked you to invest in Nova
24 because he needed to raise capital in order to meet the TARP
25 fund requirements, is that it?

1 A Well, not only did he ask me to invest in the bank, but I
2 received all of his information as all his other clients did
3 about investing in the bank.

4 Q Well, I'm not asking what all the other clients did,
5 ma'am. I'm asking you did Barry Bekkedam speak -- your
6 testimony today is that Barry Bekkedam spoke to you about
7 investing in Nova Bank, is that correct?

8 A He asked me if I wanted to invest, yes.

9 Q Okay. Now, back in 2012 you had a meeting in Philadelphia
10 with your lawyer present and prosecutors and a number of
11 federal agents, is that correct, ma'am?

12 A In 2012?

13 Q Yeah. You and your lawyer, Mr. Coren --

14 A Yes.

15 Q -- came to Philadelphia and you met with a number of law
16 enforcement agents and a prosecutor named David Axelrod, is
17 that correct?

18 A So there were about 12 people in the room four years ago.
19 If David Axelrod was one of them, then I'm sure you seem to
20 know, but I don't recall his name.

21 Q So there were federal law enforcement agents there, yes?

22 A Yes.

23 Q Okay, your lawyer, Steve Coren, was there?

24 A Yes.

25 Q And some lawyers from the Government were there, is that

1 correct?

2 A I believe so. There were a lot of government people in
3 the room. I don't have a list of who they are, their cards.

4 Q Okay, so there were government lawyers in the room, there
5 were government agents in the room and it was your lawyer in
6 the room, is that right?

7 A Yes.

8 Q Okay, and you came in and you sat down with them in a room
9 and they started asking you a bunch of questions, is that fair
10 to say? They started interviewing you about Mr. Bekkedam and
11 your dealings with Mr. Bekkedam and Ballamor Capital, is that
12 fair to say?

13 A Yes.

14 Q Okay, and during that interview some of the agents were
15 taking notes, is that correct?

16 A I don't recall.

17 MR. IGNALL: Objection.

18 THE COURT: Answered. She does not recall.

19 Q And during that interview you very clearly said to the
20 government people in the room that Mr. Bekkedam never tried to
21 get you to invest in Nova Bank, isn't that what you said to
22 them?

23 A I have no recollection of saying that Mr. Bekkedam never
24 tried to get me to invest in Nova Bank. That's a different
25 question than did he ever speak to me about it.

1 Q Well, so my question is is did you tell the government
2 agents and the people in the room that Mr. Bekkedam never tried
3 to get you to invest in Nova Bank?

4 A He never pushed Nova Bank on me, but he did speak to me
5 about it. There is a difference.

6 Q Did he ever try to get you to invest in Nova Bank?

7 A He asked me in the very beginning and I said no.

8 Q In the very beginning of what, ma'am?

9 A When he was first raising money for the bank.

10 Q And so you're saying when he was first raising money for
11 the bank, was that in 2005, 2006, 2007? When was that?

12 A I have no idea. I had about 20 different investments with
13 Mr. Bekkedam through Ballamor Capital Management. I was never
14 in any deep discussions with him about anything because he had
15 discretion over everything. He didn't push Nova Bank on me. I
16 don't know why. But we did discuss it. He didn't push Nova
17 Bank like he pushed the other investments. I --

18 THE COURT: Counsel, next question please.

19 Q So noted. Ma'am, was it in 2005 when you first started
20 investing with him? Is that when he offered -- asked you to
21 invest in Nova Bank?

22 A No, not that early, no.

23 Q Was it in the year after? When would you say that was?

24 A Somewhere during the period of years that I was with him.
25 It's 2016, sir.

1 Q I understand that, ma'am, and what I'm asking as best as
2 you understand, as best as you remember when was it that Mr.
3 Bekkedam asked you to invest in Nova Bank?

4 A I am under oath. I am answering your questions as well as
5 I can recall and with complete candor. I do not recall the
6 year. It was somewhere after 2005 and prior to the time that I
7 was no longer a client and I don't even know exactly what year
8 that was.

9 Q All right, and in 2012 when you met with the government
10 agents with your lawyer in the room and the government lawyers,
11 you told them that Mr. Bekkedam never tried to get you to
12 invest in Nova Bank, is that correct?

13 A He asked me. The answer was no. He didn't push it.
14 There is a difference. If you want to try --

15 Q All right.

16 THE COURT: Ma'am, ma'am, just a moment please. Next
17 question please, counsel.

18 Q All right, now, ma'am, you said that there was talk about
19 a Mr. Levin, is that correct?

20 A Yes.

21 Q Okay, Mr. Levin was a person who was a wealthy investor
22 who was involved in Banyon, is that correct?

23 A Banyon?

24 Q Banyon. You were involved in an investment with Mr.
25 Levin?

1 A Are you asking me about the Banyon Income Fund?

2 Q No, I'm asking you about whether Mr. Levin started a fund
3 called Banyon that you were recommended to invest in and that
4 you invested in, was that your --

5 A What's your question? Please clarify.

6 Q Was it your testimony earlier, ma'am, that you were told
7 by Mr. Bekkedam about a man named Mr. Levin who had started a
8 fund called Banyon and that Mr. Bekkedam recommended that you
9 invest in it?

10 A I want to clear up your record. It's the Banyon Income
11 Fund. And yes, he did tell me about Mr. Levin and he did ask
12 me to invest in it.

13 Q And Mr. Levin asked you -- Mr. Bekkedam asked you to
14 invest in the Banyon Income Fund, the fund that Mr. Levin was
15 running, is that correct?

16 A Correct.

17 Q Okay, and that's when he told you all about who Mr. Levin
18 was, is that fair to say?

19 A Yes.

20 Q And it was the Levin investment that he was trying to get
21 you to invest in in 2009, is that fair to say?

22 A At that time, yes.

23 Q Okay, that's what he was talking to you about?

24 A Well, there were many others during that same period of
25 time, not just the Banyon Income Fund.

1 Q But with regard to Mr. Levin, the conversations you had
2 with Mr. Bekkedam about Mr. Levin pertained to the Banyon
3 Income Fund, is that fair to say?

4 A In terms of my investing, yes.

5 Q Okay, that's why you talked to Mr. Bekkedam about Mr.
6 Levin?

7 A Yes.

8 Q Okay.

9 MR. SCHWARTZ: Could I have a moment, Your Honor?

10 THE COURT: Yes, sir.

11 Q Ma'am, you've met with federal agents and federal
12 government lawyers a number of times over the last couple of
13 years, is that fair to say?

14 A Yes.

15 Q One time they came to your home and spoke to FBI agents,
16 is that right?

17 A Yes.

18 Q Okay, and then in 2012 you and Mr. Coren came and met them
19 in Philadelphia, is that right?

20 A I don't recall the year, but yes.

21 Q Okay, and then twice last year, first in May of 2015 and
22 then in October 2015 you met with government agents and talked
23 about Mr. Bekkedam, is that fair to say?

24 A I can't clarify the months but I have met with them on
25 multiple occasions, yes.

1 Q Okay, you met with them on multiple occasions. And you
2 met with government agents and Mr. Ignall just a couple of
3 weeks ago on the 15th of this month or the 15th of last month,
4 is that fair to say?

5 A I did not meet with Mr. Ignall on the 15th of the month.
6 I met with other agents, not him.

7 Q You met -- you didn't -- so on the 15th of this month you
8 did not meet with either of the two prosecutors behind me, Mr.
9 Ignall or Ms. Barry?

10 MR. IGNALL: Your Honor, may we approach?

11 THE COURT: Sustained. I would ask that you, please.

12 (At Sidebar)

13 MR. IGNALL: All right. Inappropriate, too. I
14 didn't say anything in person to Mr. Axelrod because he's not
15 at the government table, anything appropriate to bring
16 government attorneys into this about a meeting. I always ask
17 if agents have been involved because I don't want that Ms.
18 Barry or I would be a witness. I don't want the jury to get
19 the idea that we're vouching for a witness. I don't want the
20 jury to get the idea that we're somehow covering up something
21 that we knew and didn't ask the witness anything appropriate to
22 mention about attorneys -- did you ask if the government asked
23 you this, did you say that? Perfectly permissible.

24 MR. SCHWARTZ: I'm asking about a fact. The
25 Government produced an MOI that said Mr. Axelrod, I'm sorry,

Musser - Cross/Schwartz

64

1 Mr. Ignall and Ms. Barry had a teleconference, my mistake, had
2 a teleconference with Ms. Musser on March 15th, 2016. That's a
3 fact. I'm not guessing. I'm not fishing.

4 UNIDENTIFIED SPEAKER: Didn't we have a
5 teleconference?

6 MR. IGNALL: The agents were in Florida. Ms. Barry
7 and I were in Philadelphia on the phone. I'm not quarreling
8 the accuracy of us being there. I think it's inappropriate to
9 raise to the jury that were there because that puts us in your
10 situation of vouching for the witness because now we're aware
11 of what her prior inconsistent statements or prior inconsistent
12 statement might have been or it puts in the position of looking
13 like we're intentionally putting something incorrect in front
14 of the jury.

15 THE COURT: And your question was?

16 MR. SCHWARTZ: My question was did she -- actually, I
17 said meet with and I should have said spoke with -- did she
18 speak with two prosecutors and a number of agents on March
19 15th, 2016 which is true and I have a good faith basis to ask
20 it.

21 THE COURT: Where are you going with this?

22 MR. SCHWARTZ: I'm going to ask her whether she ever
23 told them at that time that Mr. Levin was promoted as a reason
24 to invest in TARP, that he was putting money into TARP because
25 it's not there.

1 THE COURT: Well, let me say this to you, that when
2 she says, I don't what I said to -- with this document or when
3 she even mentioned the document and said, I believe she didn't
4 recall seeing it. She hadn't been called. But you have not
5 laid a foundation to get her to even say this is why I said
6 it's in writing at this point in time. And to suggest to her
7 that you're cross examining her from a document that she hasn't
8 even adopted is improper. If you want to ask her whether or
9 not she spoke with them, she can say yes or no and I agree with
10 counsel for the Government. It's easier as long as it's not
11 going to trip you up or undermine your case. Just simply say
12 did you speak to the government investigators about this and
13 ask her is that the way that you're asking her the question,
14 not looking at the paper to impeach her with it; that's
15 improper.

16 MR. SCHWARTZ: Very well, Your Honor.

17 THE COURT: All right?

18 MR. SCHWARTZ: All right.

19 MR. IGNALL: Thank you, Your Honor.

20 MR. SCHWARTZ: Thank you.

21 (Conclusion of Sidebar)

22 MR. SCHWARTZ: May I proceed, Your Honor?

23 THE COURT: You may proceed.

24 Q Are you ready, ma'am?

25 A Yes.

1 Q Okay, great. March 15th, 2016 you spoke to some
2 representatives of the government, some agents and some
3 lawyers, is that correct?

4 A It was a couple of weeks ago.

5 Q Yeah.

6 A I don't remember the exact date.

7 Q And at that time you did not tell the agents or lawyers
8 that Mr. Levin had invested money in TARP, did you?

9 A Excuse me?

10 Q I'm sorry, I'll rephrase that.

11 A I don't think that's a correct statement.

12 Q I'm going to ask another question.

13 A Mr. Levin invested in TARP.

14 Q Okay, I'm going to ask another question instead, okay,
15 ma'am? When you spoke to the agents and the lawyers on March
16 15th, you made no mention of the fact that Mr. Bekkedam had
17 told you that Mr. Levin had invested \$5 million in the bank for
18 the purpose of propping up the bank to get TARP funds, you did
19 not tell them that at that time, did you, ma'am?

20 A Excuse me?

21 Q When you spoke to the agents and the lawyers on the phone
22 on March 15th, 2016, you did not tell them that Mr. Bekkedam
23 had told you about Mr. Levin investing in Nova for the purpose
24 of TARP, did you?

25 A I had many conversations with them over the last five

1 years that this has been going on verifying that statement over
2 and over again.

3 Q So are you telling us that every time you spoke to the
4 agents when they came and met with you, you told them that Mr.
5 Bekkedam promoted the Nova TARP investment by telling you that
6 Mr. Levin was also investing in Nova for the purpose of TARP?

7 A If they asked me that question, yes, that is the way I
8 answered it each time.

9 Q Each time.

10 A With them directly.

11 Q And so when you met with them in -- at your home a couple
12 of years ago, your testimony is is that you told the agents
13 that Mr. Bekkedam talked to you about investing in Nova and
14 used the fact that Mr. Levin was investing in Nova as a reason
15 to induce you to invest in Nova, is that what you're saying?

16 MR. IGNALL: Objection. I don't think that's what
17 the witness' testimony was. May we approach again, Your Honor?

18 THE COURT: Surely.

19 (At Sidebar)

20 MR. SCHWARTZ: I can simplify the questions, Your
21 Honor, I'm sorry.

22 THE COURT: My recollection is that she said if they
23 asked me -- let me hear --

24 MR. IGNALL: That's where I'm going. There are two
25 things I'm concerned about. One, I don't think it's

1 appropriate to mention government attorneys being there. That
2 again brings us back into government attorneys being witnesses
3 which I think is inappropriate. But moreover, this is not an
4 appropriate impeachment. If the impeachment is on this date
5 you told them X but you're saying you didn't tell them this on
6 the date, that leaves a misleading impression because she met
7 with the Government a number of times. And the Court said you
8 didn't say it on this day.

9 MR. SCHWARTZ: All right, I'll ask one each day.
10 Will that be permissible?

11 MR. IGNALL: I don't think that's appropriate.

12 THE COURT: But she even said, I don't have a
13 specific recollection and says if they asked, that's what I
14 would have told them. To ask her on each individual date when
15 she's already said I don't have any opinion on any of these
16 days, there were so many and so long ago so I won't allow you
17 to ask it that way.

18 UNIDENTIFIED SPEAKER: The jury is asking that Mr.
19 Schwartz speak up with his questions. They're struggling with
20 hear him.

21 MR. SCHWARTZ: Okay, thank you.

22 THE COURT: Mr. Schwartz, the jury has indicated that
23 you're almost inaudible when you're asking your questions.
24 Please speak up.

25 MR. SCHWARTZ: Okay, thank you, Your Honor.

1 (Conclusion of Sidebar)

2 THE COURT: You may proceed.

3 Q Ma'am, is it your testimony that at some time during the
4 various interviews you had with government agents over the
5 years that you told them that Mr. Bekkedam talked to you about
6 Nova trying to get TARP funds and that Mr. Levin was investing
7 with Nova to get TARP funds as well? Is that your testimony?

8 A I don't think you said it quite right, but could you
9 clarify exactly what your question is? You've asked me just
10 three questions in one.

11 Q Okay. You've spoken to the agents a number of times about
12 this matter, is that fair to say?

13 A Correct.

14 Q Okay, at least four times?

15 A A number of times.

16 Q Okay, and during one of those times is your testimony that
17 during one or more of those times you told them that Mr.
18 Bekkedam talked to you about investing in Nova, is that right?

19 A Correct. That does not include a conversation about TARP
20 funds at the time.

21 Q We'll get to that in a second.

22 A Thank you.

23 Q So --

24 A Yes, I know he asked me to invest in Nova because I then
25 proceeded to call Pete Musser who I was -- I don't know if I

Musser - Cross/Fuller

70

1 was divorced yet, and asked him if I should and he said no. So
2 I know for sure that I was asked, sir.

3 Q You were asked by government agents about -- you were
4 asked by -- I'm sorry. When you met with government agents,
5 you told them that Mr. Bekkedam asked you to invest in Nova for
6 the purposes of TARP?

7 A No, I didn't say that.

8 Q Well --

9 A You're mixing up the conversations and I'm not going to
10 allow you to do it.

11 Q Ma'am, when you met with the government agents, at any
12 time did you tell them that Mr. Bekkedam tried to get you to
13 invest in Nova for the purpose of raising money -- for the
14 purpose of obtaining TARP funds?

15 A That is not what I said.

16 Q So the answer is no?

17 A I didn't say he tied my investing in Nova for the purpose
18 of TARP funds. I said he told me Mr. Levin invested in Nova as
19 a favor as his friend for the purposes of propping up the bank
20 so that the bank could get the bank funds. That had nothing to
21 do with him asking me to invest in Nova. You're tying the two
22 together and that's not the way it happened.

23 Q So is it your testimony that you told the federal agents
24 during one or more of your meetings with them that Mr. Bekkedam
25 told you that Mr. Levin was investing in Nova for the purpose

Musser - Cross/Fuller

71

1 of getting TARP funds?

2 A Correct.

3 Q Okay, thank you, ma'am.

4 MR. SCHWARTZ: May I step back, Your Honor?

5 THE COURT: Surely.

6 MR. SCHWARTZ: Nothing further at this time, Your
7 Honor.

8 THE WITNESS: Thank you. One more round.

9 CROSS EXAMINATION

10 BY MR. FULLER:

11 Q Good afternoon, Ms. Musser.

12 A Good afternoon.

13 Q Just a couple of questions.

14 Prior to 2011 you had never met Mr. Hartline, is that correct?

15 A I don't think I met him in 2011 either, but --

16 Q So after 2011 or --

17 A I don't remember when but I never met him when I was a
18 client of the bank.

19 Q Fair enough. So it would follow that -- and you've never
20 spoken with him during any of that period while you were a
21 client of the bank?

22 A Not that I recall, no.

23 Q So it follows that Mr. Hartline was not present for any of
24 the conversations we've been discussing in which Mr. Bekkedam
25 discussed investing in Nova Bank, is that correct?

1 A No, he was not.

2 Q And I think we've been over this but you never invested in
3 Nova Bank, is that correct?

4 A Personally, no.

5 MR. FULLER: Nothing further, Your Honor.

6 MR. IGNALL: No redirect, Your Honor.

7 THE COURT: Thank you, ma'am. You may step down.
8 Watch your step please.

9 THE WITNESS: Thank you.

10 * * * * *

11 C E R T I F I C A T I O N

12 We, LORI AULETTA and MARY POLITO, THE court approved
13 transcribers, certify that the foregoing is a correct
14 transcript from the official electronic sound recording of the
15 proceedings in the above-entitled matter.

16 **Lori Auletta**
17 Digitally signed by Lori Auletta
DN: cn=Lori Auletta, o, ou,
email=dianadoman@comcast.net,
c=US
Date: 2016.04.08 15:45:52 -04'00'

18 LORI AULETTA

19 **Mary Polito**
20 Digitally signed by Mary Polito
DN: cn=Mary Polito, o, ou,
email=dianadoman@comcast.net, c=US
Date: 2016.04.08 15:46:00 -04'00'

21 MARY POLITO

22 DIANA DOMAN TRANSCRIBING, LLC DATE: April 8, 2016

23

24

25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA) 14-CR-0548
)
 vs.)
)
BRIAN HARTLINE and)
BARRY BEKKEDAM,)
) Philadelphia, PA
) April 6, 2016
 Defendants.) 10:05 a.m.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE C. DARNELL JONES, II
UNITED STATES DISTRICT JUDGE AND JURY

APPEARANCES:

For the Government: DAVID J. IGNALL, ESQUIRE
 JENNIFER CHUN BARRY, ESQUIRE
 ASSISTANT UNITED STATES ATTORNEY
 UNITED STATES ATTORNEY'S OFFICE
 615 Chestnut Street, Suite 1250
 Philadelphia, PA 19106

For the Defendant PATRICK J. EGAN, ESQUIRE
Brian Hartline: FOX ROTHSCHILD LLP
 2000 Market Street, 10th Floor
 Philadelphia, PA 19107

 JOHN C. FULLER, ESQUIRE
 FOX ROTHSCHILD LLP
 2000 MARKET ST 20TH FL
 PHILADELPHIA, PA 19103

For the Defendant MICHAEL J. ENGLE, ESQUIRE
Barry Bekkedam: GREENBLATT, PIERCE, ENGLE,
 FUNT & FLORES
 123 South Broad Street, Suite 2500
 Philadelphia, PA 19109

Audio Operator: CARL HAUGER

Transcribed by: DIANA DOMAN TRANSCRIBING, LLC
 P.O. Box 129
 Gibbsboro, NJ 08026
 Office: (856) 435-7172
 Fax: (856) 435-7124
 Email: dianadoman@comcast.net

Proceedings recorded by electronic sound recording; transcript
produced by transcription service.

APPEARANCES (Cont'd):

For the Defendant
Barry Bekkedam:

RUSSELL D. DUNCAN, ESQUIRE
SHULMAN, ROGERS, GANDAL, PORDY &
ECKER, PA
12505 Park Potomac Avenue
Potomac, MD 20854

JOEL D. SCHWARTZ, ESQUIRE
SHULMAN ROGERS GANDAL PORDY ECKER
12505 PARK POTOMAC AVE 6TH FL
POTOMAC, MD 20854

- - -

I N D E X

<u>WITNESSES FOR THE GOVERNMENT:</u>	<u>PAGE</u>
GEORGE LEVIN	
Cross Examination by Mr. Egan	5
Redirect Examination by Mr. Ignall	23
Recross Examination by Mr. Egan	51
Recross Examination by Mr. Duncan	56
Further Redirect Examination by Mr. Ignall	62
Further Recross by Mr. Egan	62
GEORGE G. LEVIN (Outside the presence of the Jury)	
Direct Examination by Mr. Ignall	38
Cross Examination by Mr. Egan	39
Cross Examination by Mr. Duncan	40
WILLIAM SAYRE	
Direct Examination by Ms. Barry	76
Cross Examination by Mr. Egan	91
Cross Examination by Mr. Engle	99
Redirect Examination by Ms. Barry	101
GLENN ALLEN FUIR	
Direct Examination by Ms. Barry	102
Cross Examination by Mr. Egan	114
Cross Examination by Ms. Shealy	127
JEFFREY THOMAS HANUSCIN	
Direct Examination by Ms. Barry	130

I N D E X (Cont'd)

			<u>PAGE</u>	
<u>EXHIBITS</u>			<u>ID.</u>	<u>EVD.</u>
Government 67	Documents		--	82
Government 67(a)	Documents		--	82
Government 18	Outline of Stock Loan Program		--	90
Government 32	Letter		--	107
Government 33	E-mail		--	110
Government 60	7/15/09 Letter		--	112
Government 6(a)	E-mail to Mr. Gaunt		--	133
Government 116	E-mail from Mrs. Schwartz		--	149

Levin - Cross/Egan

5

1 (The following are the requested excerpted portions of
2 the proceedings.)

3 MR. EGAN: Everybody's back whenever you're ready,
4 Your Honor.

5 THE COURT: Okay. Are we ready?

6 UNIDENTIFIED ATTORNEY: Yes, Your Honor.

7 UNIDENTIFIED ATTORNEY: Yes, Your Honor.

8 UNIDENTIFIED ATTORNEY: Yes, Your Honor. Thank you.

9 MR. IGNALL: Should we bring the witness back in,
10 Your Honor?

11 THE COURT: Please. Thank you.

12 GEORGE LEVIN, WITNESS, PREVIOUSLY SWORN

13 THE COURT: Ready? All right. Good morning, sir.

14 COURTROOM DEPUTY: All rise. Court is now in
15 session, the Honorable C. Darnell Jones, II presiding.

16 (Jury in)

17 THE COURT: Good morning.

18 THE JURY: Good morning.

19 THE COURT: You may be seated. Counsel, you may
20 proceed.

21 MR. EGAN: Thank you, Your Honor. Good morning.

22 CROSS EXAMINATION

23 BY MR. EGAN:

24 Q Good morning, Mr. Levin.

25 A Good morning.

Levin - Cross/Egan

6

1 Q Levin (pronouncing), sorry. Hope you had a nice night
2 last night. Thanks for coming back.

3 A My pleasure.

4 Q Thank you. Thank you.

5 MR. EGAN: Sir, could we have on the screen just for
6 the witness Government's Exhibit 67, please?

7 Q Mr. Levin, I'd like you to look at Government's Exhibit
8 67, states at the top this is an addendum to a personal
9 financial statement, it says the applicant's name is George G.
10 Levin, is that you?

11 A Yes.

12 Q And if you look down at the bottom of the page in the
13 lower lefthand corner there's a signature, that's your
14 signature, correct?

15 A Yes.

16 Q And if you look at -- if you go to the second page,
17 please, the second page has a personal financial statements of
18 George G. Levin and Gayla Sue Levin as of March 31, 2009,
19 again, is that your signature, sir?

20 A Yes.

21 Q And is that your wife's signature below it?

22 A Yes.

23 Q Sir, if you look to the lower right-hand corner there
24 seems to be some initials, those are your initials, aren't
25 they?

Levin - Cross/Egan

7

1 A I don't know. It looks like it, but I don't -- I'm not
2 sure.

3 Q But if you look at it, if you could go -- just scroll
4 through the pages --

5 A Sure.

6 Q -- Pages 3, 4, 5, 6 through 12, you see in the lower
7 lefthand corner or maybe it's the upper right-hand corner on
8 what you're looking at, the signature?

9 A Yeah, it looks like mine.

10 Q Your initials?

11 A Yes.

12 Q So you initialed each one of the financial statements
13 confirming that you had read them and they were correct?

14 A I would do that, yes.

15 Q And that was as of March 31st, 2009, correct?

16 A Yes.

17 Q Thank you.

18 MR. EGAN: If we could go to Government's Exhibit
19 89, please. Okay.

20 Q Do you see Government's Exhibit 89?

21 A Yes.

22 Q Government's Exhibit 89 is an e-mail from Ms. Hartline to
23 Mr. Preve and it has some information there about the G. Levin
24 revised biographical and financial report PDF as of September
25 20th, 2009, do you see that, sir?

Levin - Cross/Egan

8

1 A Yes.

2 Q And could you go to the second page, please? Sir, what's
3 -- the second page is a letter from George G. Levin on your
4 stationery dated September 18th, 2009, is that correct?

5 A Yes.

6 Q And then there's a -- there's text in the letter and then
7 at the bottom of the letter there's your signature, correct?

8 A Yes.

9 Q And this was information that you were providing as a
10 supplement to the Government regulators at the Federal Reserve
11 Board and at the Pennsylvania Department of Banking regarding
12 the change in control application, correct?

13 A Yes.

14 Q And what you're telling them is about that classic cars
15 -- that kit car thing, right?

16 A Yes.

17 Q Everything you say in this letter is true, correct?

18 A Yes.

19 Q So as of -- and this letter's dated, if we go back to the
20 top, please -- this letter is dated September 18th, 2009?

21 A Yes.

22 Q Sir, we saw yesterday there were some e-mails between you
23 and Mr. Preve in which you expressed some reluctance, some
24 unhappiness with the fact that you were making this investment
25 in Nova, correct?

Levin - Cross/Egan

9

1 A Yes.

2 Q But this letter is September 18th, 2009, after those
3 e-mails with Mr. Preve, in which you're still committing to
4 make the investment, correct, sir?

5 A This was -- we had made the investment already in June
6 and we were just following through with what we had said.

7 Q This was your commitment to provide the other 13 million,
8 assuming that the change in control application was granted by
9 the Federal Reserve Board and by the Pennsylvania Department
10 of Banking, correct?

11 A We were going through it, yes.

12 MR. EGAN: The Court's indulgence just for a moment.

13 THE COURT: Yes, sir.

14 Q Now, if you could go to Government's Exhibit 100, please.
15 Government's Exhibit 100 is also a letter, isn't it, Mr.
16 Levin?

17 A Yes.

18 Q And it's a letter addressed to you, correct?

19 A Yes.

20 Q That's you, George --

21 A Gerson (phonetic) Levin.

22 Q -- Gerson Levin. Thank you, Mr. Levin. And that's your
23 home city address, Fort Lauderdale, Florida?

24 A Yes.

25 Q And the date of the letter is October 19th, 2009,

Levin - Cross/Egan

10

1 correct?

2 A Yes.

3 MR. EGAN: And if we go down into the text of the
4 letter, please. Actually, if you go just up just to the re
5 (sic) line, please.

6 Q Sir, this is a notification to George Gerson Levin with
7 respect to your request to acquire up to 24.2 percent of the
8 shares of Nova Financial Holdings in Berwyn, Pennsylvania,
9 correct?

10 A Yes.

11 Q This is pursuant to the bank Change in Control Act,
12 correct?

13 A Yes.

14 Q This is the letter responding to your application to be
15 allowed to be a participant in the change in control process
16 at Nova Bank, correct?

17 A Yes.

18 Q And what the letter says --

19 MR. EGAN: If you go to the first paragraph, please.

20 Q What the letter says is good news, we're not going to
21 oppose your purchase of this stock, correct?

22 A Yes.

23 Q So now at this point the Federal Reserve Board has said
24 -- the Federal Reserve Bank has said that you're okay to go
25 forward with the rest of your \$13 million investment, correct?

Levin - Cross/Egan

11

1 A Correct.

2 MR. EGAN: Now, if you'd go to Government's Exhibit
3 100(a).

4 Q This is also a letter dated October 19th, 2009, this is
5 from the Pennsylvania Department of Banking and again it's
6 addressed to you, right, Mr. Levin?

7 A Yes.

8 Q And this again is with respect to your application, this
9 is the state's approval of you becoming a change in control
10 person at Nova Bank, correct?

11 A Yes.

12 Q So these are the approvals you and Mr. Preve were hoping
13 not to get, correct?

14 A That's not correct at all.

15 Q Okay. You were hoping to be able to make the rest of
16 your investment, correct?

17 A We were negotiating all during this time with Mr.
18 Hartline and Barry, certain things that were untenable to me,
19 but we had just kept moving forward. In fact, I kept moving
20 forward with the bank until the very end, very end sometime in
21 2010. I kept paying interest on the loans and everything
22 else.

23 Q You were keeping your commitment, correct?

24 A Yes.

25 Q Okay. Sir, you know that at this point you're under an

Levin - Cross/Egan

12

1 obligation to put \$13 million into the bank, correct?

2 A Yes.

3 Q Now, Mr. Preve had told you as part of this process that
4 there had been a TARP approval contingent on a \$10 million
5 infusion of capital, correct?

6 A I'm not sure exactly how much it was. I know there was a
7 TARP approval.

8 Q Okay.

9 MR. EGAN: If we could go to Government's Exhibit
10 114, please, just for the witness. Okay. And if you could
11 blow up the text, please.

12 Q This is an e-mail October 23rd, 2009, it's from Mr.
13 Bekkedam to Mr. Preve, and then Mr. Preve forwards it -- or
14 I'm sorry, Mr. Bekkedam then forwards it to you, correct?

15 A Yes.

16 Q So you got this e-mail.

17 MR. EGAN: And if you go down into the text, let's
18 go into the second paragraph, please -- I'm sorry, the --
19 it's actually the fourth paragraph, please. And I believe 114
20 is in evidence.

21 UNIDENTIFIED ATTORNEY: I believe it is, Your Honor.

22 MR. EGAN: Could we show that to the jury, please?

23 THE COURT: Yes, sure.

24 MR. EGAN: Thank you, Your Honor.

25 Q So this is the email that gets forwarded to you by Mr.

Levin - Cross/Egan

13

1 Bekkedam in which -- it may be a little hard to follow through
2 the math, but let's just go through it for a moment. So Mr.
3 Bekkedam writes we originally assumed we would raise \$50
4 million to execute on pour plan with \$18 million being
5 committed by George. That's you, right, Mr. Levin?

6 A Yes.

7 Q And the 50 million plan is the -- sort of the grander
8 plan to invest in banks in Florida and other things, correct?

9 A I would imagine so.

10 Q And what Mr. Bekkedam is doing is he is now going through
11 what exactly is happening. He says in the second line Nova
12 would lend George \$5 million for the first amount and then he
13 writes done, because that's the \$5 million loan you got from
14 Nova, correct?

15 A Yes.

16 Q Then he says the next amount was the \$10 million and
17 that's the TARP contingency, that's the money that TARP is --
18 Treasury has said has to be put into the bank, correct?

19 MR. IGNALL: Objection, assumes a fact not in
20 evidence.

21 Q Well do you know whether that's what it is, sir?

22 A I don't, no.

23 Q Okay. In any event, Mr. Bekkedam writes he's raised \$5
24 million, done and funded, and then he says and you are going
25 to, George would then fund the next five million which needed

Levin - Cross/Egan

14

1 to be funded by Wednesday, correct?

2 A Yes.

3 Q And that's five million of the money that you have agreed
4 to invest in Nova out of the 13 million, correct?

5 A Correct.

6 Q And it says it needs to be funded by Wednesday.

7 MR. EGAN: And if we could go back to the top of
8 this e-mail.

9 THE COURT: Counsel, let me just stop you here.

10 MR. EGAN: Sure, Your Honor.

11 THE COURT: Ladies and gentlemen, we have some
12 students who have come to view a portion of the trial. You
13 may continue.

14 MR. EGAN: Thank you, Your Honor.

15 Q Sir, so this --- the e-mail that Mr. Bekkedam sends to
16 you is dated Friday, October 23rd, 2009, correct?

17 A Yes.

18 MR. EGAN: So going back down to the text, please,
19 and the fourth paragraph, please.

20 Q So Mr. Bekkedam says and George would fund the five
21 million, which needed to be funded Wednesday. So you would
22 agree if it's Friday, October 23rd, Wednesday would be
23 Wednesday, October 21st, correct?

24 A Say that again.

25 Q Sure.

Levin - Cross/Egan

15

1 A Twenty-third.

2 Q Yes.

3 A This is -- it wouldn't be -- seven days from this would
4 be the 30th.

5 Q The previous Wednesday, which needed to be funded, past
6 tense.

7 A Oh, I see what you're saying. Yeah, okay.

8 Q So that would be October 21st, correct?

9 A Yeah.

10 MR. EGAN: Mr. Bekkedam, if we can go down to the
11 last two lines, please. No, I'm sorry, the last two lines in
12 the paragraph, please. Nope. I'm sorry, I'm confusing you.
13 The fourth paragraph, last two lines.

14 Q So Mr. Bekkedam writes that an extension for Treasury,
15 since the deadline was Wednesday, has been asked for, but it
16 can't be clear that it's going to happen, so we need to get
17 the rest of the money in now, correct?

18 A I don't -- it reads, it begins bank in -- two weeks and
19 the rest by early first quarter.

20 Q Okay.

21 A Then it goes on and it says based on the funding this
22 week we have granted 13.5 million in TARP.

23 Q Right. So based on the funding, being the ten million,
24 the five million Mr. Bekkedam's raised and the five million
25 you're going to be put in, based on that funding, the 13.5

Levin - Cross/Egan

16

1 million in TARP has been granted, correct?

2 A That's what it says.

3 Q Okay.

4 A It says we have requested an extension from the Treasury,
5 but cannot guarantee that we get it. They are bureaucrats,
6 not businesspeople.

7 Q So it's not clear whether Treasury is going to extend the
8 deadline, but he's still asking you to put the money in now,
9 right?

10 A I guess he is. I'd need to read the whole thing. This
11 is just taking a piece out of it.

12 Q Sure.

13 A I'd like to read the whole letter.

14 Q Sure. Take your time.

15 A Can you blow it up?

16 MR. EGAN: Yeah, could we show the whole letter,
17 please?

18 A Yes, okay, it says again we originally assumed we would
19 raise -- this was the assumptions.

20 Q Yeah. So what Mr. Bekkedam's telling you, this -- if
21 we're going to get to do what we want to do we're going to
22 need you to put in your five million, right?

23 A Yes.

24 Q And you testified yesterday that, in fact, you had access
25 to \$5 million at that point, correct?

Levin - Cross/Egan

17

1 A Yes.

2 Q And but you wanted to remain liquid because if Scott
3 Rothstein called you and said I had another settlement to fund
4 you wanted to be able to have ready cash to put into the
5 Banyan income -- the Banyan Funds, correct?

6 A We always had money going in and out.

7 Q So, but that's what you wanted, you wanted to -- you at
8 that point were thinking about your liquidity, weren't you,
9 Mr. Levin?

10 A There were some rumblings at this point about the
11 investment itself failing.

12 Q So this is about seven, eight days before you found out
13 what happened on Halloween, correct?

14 A That is correct.

15 Q But at this point you're still thinking I'm going to have
16 to put in at least \$5 million, correct?

17 A Yes. If we continued with this. As I said, there was a
18 great many things that were not written down that I spoke to
19 Mr. Hartline about.

20 Q Sure. There's a lot --

21 A One of those would be the reverse stock split we talked
22 about and --

23 Q Sure.

24 A -- the other one would be there was no -- let's see how
25 -- there was no anti-dilution clause in the documents that

Levin - Cross/Egan

18

1 were signed, that I signed, that I thought were standard. We
2 never did a private placement or bought private stock in
3 anything that we didn't have an anti-dilution clause.

4 Q Certainly.

5 A And I had questioned Mr. Hartline about this several
6 times and his comments to me were that he couldn't do it
7 because after we made the investment there were a couple of
8 other people who stepped in and he gave us some extra stock
9 and stuff like that, but it was a lot of negotiation going on
10 in this period of time.

11 Q So like you said to us yesterday, as a businessman if you
12 don't quite like the deal you're in you try to negotiate,
13 right?

14 A Sure.

15 Q Sir, you know a person by the name of Douglas Von Allmen,
16 don't you?

17 A Oh, yeah.

18 Q Mr. Von Allmen, he's a neighbor of Scott Rothstein?

19 A He was, yes.

20 Q And Mr. Von Allmen was someone who also invested in the
21 Banyan Income Funds, is that correct?

22 A That is correct.

23 Q If I could just take you back for a moment.

24 MR. EGAN: I'd like to go to -- excuse me, Your
25 Honor -- Government's Exhibit 27, please.

Levin - Cross/Egan

19

1 Q Mr. Levin, I'll represent to you that Government's
2 Exhibit 27 is a letter from Mr. Bekkedam to Nova Financial
3 Holdings, do you see that, s ir?

4 A Yes.

5 MR. EGAN: And if you could blow up the whole letter
6 please or show the whole letter.

7 Q Have you ever seen this letter before?

8 A No, I have not.

9 Q Okay. If you could read down into the text of it Mr.
10 Bekkedam is saying that Ballamor Capital has an investor who
11 may be willing to put up to \$15 million into Nova Financial
12 Holdings. You believe that's you, sir, don't you?

13 A I would think so, yes.

14 Q And in the letter Mr. Bekkedam says that there are a
15 couple of things this investor, you, are going to want to know
16 about, you're going to want to know whether TARP funding has
17 been granted --

18 MR. EGAN: If you go to the third paragraph, blow
19 that up, please.

20 A Mm-mm.

21 Q -- whether TARP funding has been granted and you'll also
22 want to know about this Delaware Valley Financial Group deal,
23 correct?

24 A I just lost that.

25 Q Yeah, sure, it's a little hard. It's in the third

Levin - Cross/Egan

20

1 paragraph there, which now I got the text there in front of
2 you.

3 MR. EGAN: Could we show this to the jury, Your
4 Honor? It's been admitted into evidence.

5 THE COURT: Any objection?

6 MR. IGNALL: I don't think it's been admitted, but
7 we have no objection to --

8 MR. EGAN: Well then let's not show it to the jury.
9 We'll wait til it's admitted, Your Honor.

10 THE COURT: Very well.

11 Q But you see that there and those are two things that Mr.
12 Bekkedam says that this very wealthy investor wants to now
13 about, the current TARP application funding and the pending
14 DVFG transaction, correct?

15 A Yes.

16 Q And those are things that Mr. Bekkedam had discussed with
17 you, correct?

18 A Yes.

19 Q So those were a couple of contingencies for you before
20 you invest, right?

21 A Yes.

22 Q What Mr. Bekkedam's doing here is he's protecting you the
23 investor by saying he might want to invest, but we need to see
24 that these things happen first, correct?

25 MR. IGNALL: Objection, calls for speculation.

Levin - Cross/Egan

21

1 THE COURT: Sustained.

2 A I --

3 THE COURT: Sustained.

4 A As I said, I've never seen --

5 THE COURT: Don't answer it.

6 MR. EGAN: You don't -- you could -- you don't have
7 to answer the question.

8 THE WITNESS: I'm sorry. I'm sorry.

9 MR. EGAN: I'll withdraw the question, Your Honor.

10 Q So, sir, when you negotiate business deals you frequently
11 did put contingencies on before you would make your
12 commitment, correct?

13 A It would be called due diligence.

14 Q Very good. Thank you. Sir, you originally went to Mr.
15 Bekkedam -- when you originally met Mr. Bekkedam one of the
16 things that most impressed you about Mr. Bekkedam was what you
17 believed was his ability to raise funds, correct?

18 A Yes.

19 Q And you testified that you were impressed by what you
20 heard about his company Ballamor Capital, correct?

21 A Yes.

22 Q And you know that Mr. Bekkedam wanted you to become a
23 client of Ballamor Capital, correct?

24 A On and off, yes.

25 Q And you finally decided not to become a client of

1 Ballamor Capital because you had different investment ideas,
2 correct?

3 A Yes.

4 Q But you did decide to become a business partner with Mr.
5 Bekkedam on a number of different ventures, didn't you?

6 A Several, yes.

7 Q And you believed the most important thing for you that
8 Mr. Bekkedam would be very good at raising funds for the
9 Banyan Funds, correct?

10 A Oh, yes.

11 Q Sir, is it fair to say tat you like to do business with
12 people you like?

13 A I think that's a natural thing.

14 Q Sure. And you liked Mr. Bekkedam, didn't you?

15 A Sure did.

16 Q And it's even better if you do business with people you
17 like who can also help you make money, correct?

18 A That would be fine.

19 Q And that's what you thought Mr. Bekkedam could do for you
20 too, he could help you make money, correct?

21 A I thought we could make money for each other.

22 Q Sure. So those are the two reasons you -- you liked him
23 and you believed he could make you money, that's why you did
24 business with Mr. Bekkedam, correct?

25 A I don't see -- if the deals were fine I don't see any

Levin - Redirect/Ignall

23

1 reason not to.

2 MR. EGAN: Thank you, Your Honor. I have no further
3 questions of this witness.

4 MR. IGNALL: Your Honor, may we address the issue I
5 mentioned earlier before redirect, outside the presence of the
6 jury?

7 THE COURT: Yes. Let's take a brief recess at this
8 time, please.

9 COURTROOM DEPUTY: All rise.

10 (Jury out)

11 THE COURT: You may be seated.

12 MR. IGNALL: I think we want the witness here for
13 this. This is -- I was going to inquire briefly to make sure
14 we're all on the same page. May I, Your Honor?

15 THE COURT: Yes, you may.

16 REDIRECT EXAMINATION

17 BY MR. IGNALL:

18 Q All right. Mr. Levin, I just want to ask you a couple
19 questions outside the jury so that you understand the
20 limitations of what I'm asking you, okay?

21 A Okay, sure.

22 Q On October 31st or roughly, what did you learn about the
23 Rothstein Investments?

24 A That they were a fraud.

25 Q Okay. And more specifically, did you learn whether the

1 money was actually invested in these settlements?

2 A Yeah. We had a very -- we didn't know exactly at that
3 moment, but we found out very shortly thereafter.

4 Q That there was --

5 A The funds disappeared.

6 Q -- there were no settlements?

7 A Correct.

8 Q Okay. So as of June 30, when you thought you were worth
9 -- how much did you think you were worth on June 30th, I mean
10 roughly?

11 A If you take in the Rothstein Investments --

12 Q Yes.

13 A -- it was quite substantial. It was all cash too. It
14 was not -- it was mostly cash.

15 Q But when you thought you thought you -- it might have
16 been 300 million --

17 A Four hundred million, something like that.

18 Q Did that include --

19 THE COURT: Sorry. Four hundred million?

20 THE WITNESS: Yes.

21 Q Did that include what you thought the Rothstein
22 Investments were worth?

23 A Yes.

24 Q All right. And did you later learn that they, even as of
25 June 30th, weren't worth that?

Levin - Redirect/Ignall

25

1 A June 30th I didn't realize it.

2 Q No, no, but did you later learn that you were --

3 A Oh, June --

4 Q -- mistaken as of June 30th?

5 A I see what you're saying. Yes. We had audited certified
6 statements.

7 Q I'm not going to ask you that. So what I'd like to ask
8 is after October 31st --

9 MR. IGNALL: I'm asking it in a leading way, Your
10 Honor. Let me try it right now.

11 THE COURT: You can -- I'm going to permit it. Go
12 ahead.

13 MR. IGNALL: We'll see if there's an objection to
14 how I'm going to try and say it.

15 Q After June -- after October 31st, 2009, did you learn
16 something new about these investments with Mr. Rothstein?
17 It's just a yea or no.

18 A Yes.

19 Q And did you learn about whether these investments were
20 actually worth anything as of June 30th?

21 A It's a difficult question to answer. If we --

22 THE COURT: Let me just stop you there. Would you
23 rephrase the question to specifically address what he knew as
24 of June 30th and then phrase the other question at what point
25 in time did he learn otherwise.

1 MR. IGNALL: Okay. As of June 30th did you have an
2 understanding about how valuable the Rothstein Investments
3 were?

4 A Yes.

5 Q At sometime later did you learn that even as of June 30th
6 they weren't worth anything?

7 A Yes.

8 MR. IGNALL: How about that?

9 THE COURT: All right.

10 MR. EGAN: Your Honor, I still don't see the
11 relevance of this --

12 THE COURT: Well, let's just go --

13 MR. EGAN: -- if Mr. Hartline doesn't know it.

14 THE COURT: Well, we get -- that's the next
15 question. Let me ask it. Was there any communication between
16 you, sir, and Mr. Hartline, after June 30th regarding what you
17 had learned about the Rothstein Investments? And if there's
18 an objection by all means lodge it, please.

19 THE WITNESS: I don't think -- I didn't know until
20 October 31st.

21 THE COURT: That's when you learned?

22 THE WITNESS: Yes.

23 THE COURT: All right.

24 MR. IGNALL: But that's as far as I want to go with
25 that. It's not -- could we discuss this at sidebar, perhaps,

1 Your Honor?

2 THE COURT: Sure. Can he step down?

3 MR. IGNALL Yes.

4 THE COURT: Sir, you can step down.

5 (Sidebar begins at 11:00:04)

6 MR. EGAN: Your Honor, I'm sorry about the
7 contesting.

8 THE COURT: I appreciate that. Been there, done
9 that.

10 MR. IGNALL: Testing response, too.

11 THE COURT: I'm never that way.

12 (Laughter)

13 THE COURT: With my kids. All right.

14 MR. IGNALL: I don't understand the point. If Mr.
15 Hartline doesn't -- if he doesn't know until October 31st,
16 obviously Mr. Hartline doesn't know until October 31st. What
17 is the relevance?

18 THE COURT: If he wants to elicit that, do you have
19 a problem with that?

20 MR. EGAN: The problem with it seems to be that they
21 want to elicit the testimony to say you -- this is what we're
22 getting -- he thinks it's worth \$400 million on June 30th and
23 there's no reason to believe that the money that's invested in
24 Banyan is fiction. And it's not until Halloween that he
25 learns it was a fiction. All that is fine. It's then asking

1 him the next question to go back and say so then on Halloween
2 you learned that in reality you weren't worth anything back on
3 June 30th because then they want to say somehow that Mr.
4 Hartline and Mr. Bekkedam should have been omniscient and
5 known that.

6 THE COURT: Well, I just asked him if he knew and
7 did he communicate with Mr. Hartline and he said no.

8 UNIDENTIFIED ATTORNEY: Right.

9 THE COURT: You got a problem with that?

10 UNIDENTIFIED ATTORNEY: I don't have a problem --

11 THE COURT: -- in terms of inferences?

12 UNIDENTIFIED ATTORNEY: I don't have a problem with
13 that answer, no. But the problem is is that why is it
14 relevant to go back and say now you realize that you weren't
15 worth anything on June 30th. There's no probative value to
16 that fact. The fact is is that if he believed and he
17 communicated to the defendants that he was worth 400 million
18 and by all intents and purposes everyone believed he was worth
19 400 million. And the most important person that believed that
20 would be him. That's the relevant fact as to the actions that
21 were taken by the bank and actions that were taken by Mr.
22 Bekkedam. They relied upon that information and everyone had
23 a reasonable belief to do so. Going back and then saying well
24 once we learn on Halloween that those investments are a fraud
25 -- and I think there's some prejudice there in saying fraud or

1 Ponzi or whatever it may be --

2 THE COURT: Well, you can address that question.

3 UNIDENTIFIED ATTORNEY: It then leaves in the jury's
4 mind that, you know, there's something that everyone should
5 have known about those investments, that they should have
6 known they were of no value. And that leads to the inference
7 that I should have figured it out, Mr. Bekkedam should have
8 figured it out, Mr. Levin should have figured it out.

9 THE COURT: I think I'm missing something here.
10 What is it that you intended to prove here by asking those
11 questions?

12 MR. IGNALL: I'm trying to clarify something. And
13 it may be my fault for not objecting earlier. The questions
14 that went to Mr. Levin were not about did you tell Mr.
15 Hartline of Mr. Bekkedam that you were making this big spread,
16 that you have, you know, 12 yachts and 14 different private
17 jets, I understood those questions to be elicited so that the
18 defense could argue to the jury Mr. Levin's fabulously
19 wealthy, so how could my client know that loaning him money is
20 not the same as money in the bank to a regulator.

21 THE COURT: Well that's not going to be any
22 different if he answers the questions that he just put to him,
23 right?

24 MR. IGNALL: Well, no, but they -- the point is the
25 defendants didn't know that and --

1 MR. EGAN: Actually, the information that I cross
2 examined on is information that was provided to Mr. Hartline,
3 so indeed it was told to Mr. Hartline, which is why I went
4 into it. The financial statements were provided to Mr.
5 Hartline.

6 THE COURT: I don't --

7 MR. EGAN: He was told through those financial
8 statements that the guy was worth all that.

9 THE COURT: No, no. Yes, I'm saying, but at this
10 point in time what I'm just trying to understand is -- I
11 understand what you're saying was conceivably a misperception
12 and to go back now and correct that misperception still leaves
13 him with a situation where Mr. Hartline, Mr. Bekkedam
14 believed, as did Mr. Levin, that he's worth \$400 million.

15 UNIDENTIFIED ATTORNEY: I believe that he believed
16 that, yes.

17 THE COURT: And if the jury otherwise didn't hear
18 this specific information, hadn't learned what they've
19 learned, had questions about it to start passing
20 (indiscernible) notes during deliberation, why not deal with
21 that now by letting him do what he wants to do because it's a
22 fact?

23 UNIDENTIFIED ATTORNEY: It's going to confuse the
24 issue, Your Honor.

25 THE COURT: I think it -- I'm confused with the

1 issue, quite frankly.

2 UNIDENTIFIED ATTORNEY: Well again, it's asking
3 people to basically unring a bell. Nobody knew. So the fact
4 that now that in retrospect we can all go back and say you
5 were wrong as of June 30th, but that's not relevant, nobody
6 knows that.

7 THE COURT: But they --

8 UNIDENTIFIED ATTORNEY: Nobody knows that.

9 THE COURT: This information has come to the jury at
10 this point in time just in a different kind of way. Remember
11 he did testify that he was bankrupt.

12 UNIDENTIFIED ATTORNEY: But he was forced into
13 bankruptcy eventually, yeah.

14 THE COURT: Right. So all this is just clarifying
15 --

16 UNIDENTIFIED ATTORNEY: But that didn't happen for
17 awhile.

18 THE COURT: I know, but it's just clarifying to me
19 what the jury should have a good clear understanding about.
20 And it's not prejudicial, frankly, to either side, quite
21 frankly.

22 UNIDENTIFIED ATTORNEY: Well, I guess the question
23 is if it's going to clarify the point and it's going to be
24 permitted later on to argue to the jury that because Banyan
25 really wasn't worth anything that's evidence that they can

1 consider that the defendant should have known all that.

2 THE COURT: If Banyan did not know or if defendants
3 did not know about Banyan's worthlessness --

4 UNIDENTIFIED ATTORNEY: Right.

5 THE COURT: -- until October --

6 UNIDENTIFIED ATTORNEY: Right.

7 THE COURT: -- then how is that going to prejudice
8 the defendants?

9 UNIDENTIFIED ATTORNEYS: Well, that's where I think
10 they want to go.

11 THE COURT: If you want to argue that then you guys
12 would have a field day.

13 UNIDENTIFIED ATTORNEY: They shouldn't have known,
14 Your Honor. That's the -- they shouldn't have. There's no
15 reason that they should have known, so --

16 THE COURT: And you can't argue that to the jury?

17 UNIDENTIFIED ATTORNEY: Yeah. But what they're
18 going to do is they're going to get confused, Your Honor. I'm
19 confused right now about whether or not they're going to be
20 able to say that well, obviously these guys weren't doing
21 their proper due diligence. And there's no evidence of that.

22 THE COURT: There's no evidence in terms of the
23 defense having any knowledge, any more than Mr. Levin. It
24 seems to me that that enures to the benefit of the defendant.
25 So why would the jury not have a right to know that?

1 UNIDENTIFIED ATTORNEY: Only one thing, Your Honor,
2 and that is if the inference is that that business was a fraud
3 and was always a fraud. The defendants reliance on the
4 (indiscernible) business that might be called into question
5 because jurors get confused easily. So what he's inferring is
6 it was always a fraud.

7 UNIDENTIFIED ATTORNEY: They're relying on fraud.

8 UNIDENTIFIED ATTORNEY: I think it also creates the
9 scenario, it begs the question of is the jury going to start
10 saying well then Mr. Bekkedam didn't do enough due diligence
11 or the bank didn't do enough due diligence, which is not fair
12 for them to say under the circumstances because no one could
13 have done that due diligence to figure it out.

14 THE COURT: Do you think he's going to object when
15 you stand up and say that to the jury?

16 UNIDENTIFIED ATTORNEY: I don't know. He might
17 object to a lot of things I say to the jury.

18 THE COURT: And I would say overruled.

19 UNIDENTIFIED ATTORNEY: Your Honor, I think this --
20 I don't even understand the point he's trying to make.

21 THE COURT: Mr. Ignall, help me here.

22 MR. IGNALL: I was happy to leave it be before we
23 had cross examination questions that went beyond what someone
24 at the bank knew. I don't remember any testimony that Mr.
25 Levin talked about, you know, his plane, talked about the

1 spread he was making on this investment --

2 THE COURT: Right.

3 MR. IGNALL: -- with anyone at the bank in order to
4 get the loan. And if I missed that then --

5 MR. EGAN: The documents that say those things were
6 provided to the bank, therefore, the bank looked at them.

7 MR. IGNALL: The document says he's worth -- that he
8 has X in assets. If that's where it ended I wouldn't be
9 standing here.

10 THE COURT: But when he asked these questions about
11 the plane and some of the other holdings, he was referring to
12 the exhibit. Like I said, that's what I was looking at.

13 MR. IGNALL: No, no, I --

14 THE COURT: These things are old -- the bank knew
15 that.

16 MR. IGNALL: I'm sorry. I may be unclear. What I
17 was talking about is you were borrowing money from, you know,
18 investors in Banyan, paying them --

19 THE COURT: One second.

20 MR. IGNALL: -- paying them 12 percent so you can
21 make 25 percent and you were making millions and millions of
22 dollars on this investment. I don't remember any testimony
23 telling that back to either defendant's knowledge at the time.
24 I understood that to mean you're super rich period.

25 MR. ENGLE: Well, the -- but remember, the

1 Government had raised the issue about the fact that this was
2 an unsecured loan and what personal guarantees were being
3 given and what assurances were being given and it was the
4 personal guarantees that were at issue. And all of that was
5 elicited on direct examination. And the documents that back
6 up the assets that are assuring all of these things are the
7 documents that the bank got, the bank examined, the bank
8 relied upon. Obviously Mr. Bekkedam is not even in that mix.

9 THE COURT: Does the jury know by reason of Mr.
10 Levin's testimony yesterday that as of Halloween he was broke?

11 MR. ENGLE: No. No, because he wasn't broke.

12 THE COURT: Well, does the jury -- did the jury
13 receive from his mouth yesterday that as of Halloween -- it's
14 Mr. Duncan's questioning, I believe, yesterday -- who raised
15 the issue about the bankruptcy?

16 UNIDENTIFIED ATTORNEY: Mr. Egan.

17 MR. EGAN: I did.

18 THE COURT: Okay.

19 MR. EGAN: He was forced in August. Well he
20 testified on direct it was May, so I clarified it was August.

21 THE COURT: And did he testify as to why he filed
22 bankruptcy?

23 MR. EGAN: He was forced in those creditors.

24 MR. IGNALL: The creditors include the guarantee --
25 can I try to write out a question?

1 THE COURT: Please.

2 MR. IGNALL: If I can eliminate the jury.

3 THE COURT: Okay.

4 (Court spoke on another matter)

5 MR. IGNALL: All right. I probably want to bring
6 Mr. Levin in first just to make sure that --

7 THE COURT: Okay.

8 MR. IGNALL: But, I would say on October 31st, on or
9 about, did you learn anything about the Rothstein Investment.
10 I think we've already been through that. Did you
11 --

12 UNIDENTIFIED ATTORNEY: I ask he be instructed not
13 to say they were a fraud.

14 THE COURT: Okay.

15 MR. IGNALL: Well, let me say the question. Did you
16 learn on October 31st that the Rothstein Investment was not
17 worth anything?

18 UNIDENTIFIED ATTORNEY: Okay.

19 MR. IGNALL: Did you learn that it had not been
20 worth anything as of -- all along -- is there a date? Did you
21 learn that it had not been worth anything all along or on June
22 -- pick a day. I don't think --

23 UNIDENTIFIED ATTORNEY: I don't think we're going to
24 finalize you the 30th.

25 MR. IGNALL: All along, how about that?

1 UNIDENTIFIED ATTORNEY: If you're going to ask it
2 that way at least it's --

3 MR. IGNALL: Yeah.

4 THE COURT: Okay.

5 UNIDENTIFIED ATTORNEY: -- more generic.

6 MR. IGNALL: Yeah. I think that's better than June
7 30th.

8 THE COURT: All right. Now, is there any question
9 that you would want to ask based on that question?

10 MR. EGAN: Surely. You never told Mr. Hartline.

11 THE COURT: Is there a problem with that?

12 UNIDENTIFIED ATTORNEY: No. No, sir.

13 THE COURT: That was my point all along.

14 UNIDENTIFIED ATTORNEY: Never --

15 MR. EGAN: And then we're going to probably want to
16 ask him all the way up until Halloween if you believed that it
17 was --

18 THE COURT: Again, we're talking facts here.

19 UNIDENTIFIED ATTORNEY: That's fine. I agree.

20 THE COURT: All right. Fair enough.

21 MR. IGNALL: If I can bring Mr. Levin in before the
22 jury --

23 THE COURT: Absolutely.

24 MR. IGNALL: -- just to make sure that he's limited
25 to the --

Levin - Direct/Ignall

38

1 THE COURT: Yes or no answers.

2 MR. IGNALL: Okay. Okay, thank you.

3 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

4 THE COURT: Thank you all.

5 (Sidebar ends at 11:14:11)

6 MR. IGNALL: Let me ask a more mundane question.

7 Is it necessary for a break now or to --

8 THE COURT: Yes. Yes.

9 MR. IGNALL: Okay, I'll be right back, Your Honor.

10 THE COURT: Counsel, you can have five minutes here
11 too --

12 UNIDENTIFIED ATTORNEY: Oh, thank you, Your Honor.

13 THE COURT: -- since you wasted yours. Not wasted,
14 I mean since --

15 (Laughter)

16 (Pause)

17 THE COURT: Okay.

18 MR. IGNALL: May I inquire?

19 THE COURT: Yes, sir.

20 BY MR. IGNALL:

21 Q Mr. Levin, when we get back before the jury I'm going to
22 ask these questions and based on an agreement with counsel and
23 a ruling by the Court if you can answer it yes or no please
24 do. So let me try it right now. On October 31st of 2009 or
25 about then did you learn anything about the Rothstein

Levin - Direct/Ingnall/Cross/Egan

39

1 Investments?

2 A Yes.

3 Q Did you learn on or about October 31st that the Rothstein
4 Investment was not worth anything?

5 A Yes.

6 Q Did you learn at about October 31st that it had not been
7 worth anything all along?

8 A Yes.

9 Q All right. And that -- don't elaborate, if those are
10 questions I ask just answer -- if you can answer it yes please
11 do so.

12 A Okay.

13 THE COURT: Would the defense wish to tender the
14 question now so you'll know or not?

15 MR. EGAN: Sure, it can't hurt.

16 CROSS EXAMINATION

17 BY MR. EGAN:

18 Q Sir, you never told the -- do it this way -- you believe
19 until October 31st that those investments were worth what they
20 said they were, correct?

21 A Yes.

22 Q And you certainly never told Brian Hartline that they
23 weren't worth what you believed they were worth?

24 A Up until the 31st, yes.

25 Q Correct.

Levin - Cross/Duncan

40

1 A Yes.

2 THE COURT: All right. Mr. Duncan?

3 MR. DUNCAN: One moment, Your Honor.

4 THE COURT: This is a rehearsal.

5 (Laughter)

6 MR. DUNCAN: We don't usually get that. You're the
7 star of the play.

8 CROSS EXAMINATION

9 BY MR. DUNCAN:

10 Q Sir, you had good reason to believe as of October 31st,
11 2009 that the Rothstein Investments were a good investment,
12 correct?

13 A Up until then?

14 Q yes.

15 A Til a few days before, you know, it was -- I came back
16 from St. Thomas because of it.

17 Q So, well just the October 31st time frame --

18 A Yes.

19 Q -- up until those few days right around there --

20 A Yes.

21 Q -- you believed it was a good one? And you had a good
22 reason to believe it, correct?

23 A Oh, yes.

24 Q And the good reason was that you had audited financials
25 regarding this, correct?

Levin - Cross/Duncan

41

1 A Oh, yes.

2 Q And you had people in TD Bank telling you that the money
3 was there, correct?

4 A Yes.

5 Q And that's what you told Mr. Bekkedam too, correct?

6 A Of course. Yes.

7 Q So Mr. Bekkedam had no reason to believe that the
8 Rothstein Investments weren't any good?

9 THE COURT: That question I won't allow.

10 MR. DUNCAN: All right, Your Honor, I understand.

11 THE COURT: The last one.

12 MR. DUNCAN: Okay.

13 THE COURT: All right. If you could add some from
14 some other source.

15 MR. DUNCAN: I'll figure some other way to try to do
16 it, Your Honor. Thank you

17 THE COURT: Very well. All right. Any remaining
18 issues in that regard, counsel?

19 MR. EGAN: No, Your Honor.

20 MR. IGNALL: No, Your Honor.

21 THE COURT: All right, we can bring the jury back
22 in. Thank you.

23 COURTROOM DEPUTY: All rise.

24 (Jury in)

25 COURTROOM DEPUTY: Ladies and gentlemen, we are back

Levin - Redirect/Ignall

42

1 on the record.

2 THE COURT: Thank you. You may be seated.

3 MR. IGNALL: May I proceed, Your Honor.

4 THE COURT: You may proceed.

5 BY MR. IGNALL:

6 Q Mr. Levin, do you remember being asked questions on cross
7 examination by Mr. Egan about the applications to both the
8 state and federal government for the change in control?

9 A Yes.

10 Q All right. If I could bring your attention to Exhibit
11 64. Let me bring your attention to Exhibit 63. I'm sorry. I
12 believe this as already been admitted. If I could turn your
13 attention to the fourth page. It could end in 997 -- of
14 Exhibit 63.

15 A Okay.

16 Q I'm sorry, 63, please. Is that your signature at the
17 bottom?

18 A Yes.

19 Q Do you know what this is?

20 A It's addressed to the Department of Banking. If you
21 could blow it up I could see it better. Yes, it's -- I wonder
22 who it's addressed to, it's now -- who sent this. I guess I
23 signed it, so --

24 Q Yes. Did you draft this letter?

25 A No.

Levin - Redirect/Ignall

43

1 Q Let me go to the next page and we'll come back to this.
2 You see where it says -- the next page says Section 112
3 application questionnaire?

4 A Yes.

5 Q And it says the following items are to be answered in a
6 letter?

7 A Yes.

8 Q Was the letter I just showed you the response to those
9 questions, do you know?

10 A It seems to be, yes.

11 Q And let's look at Question D.

12 MR. IGNALL: If you could blow that up.

13 Q Does it say state the source and amount of funds or other
14 consideration used or to be used in making the purchases?

15 A Yes.

16 Q Do you know if that question was asking for just funds
17 put in going forward or funds that you may have already put
18 in?

19 MR. EGAN: Objection.

20 THE COURT: Overruled.

21 A I would have to say that this is the application, so I
22 would imagine it was the funds to be put in.

23 Q Does it say used or to be used, what do you understand
24 that to mean?

25 A (No audible response).

Levin - Redirect/Ignall

44

1 Q Let me put it back -- we can go back to the previous
2 page.

3 MR. EGAN: Objection. He's answered the question.

4 THE COURT: No. Overruled.

5 Q Let me go back to the previous page. Is Item D in your
6 letter your response to that question?

7 A Okay. Yes.

8 Q And it says it is the applicant's intention to pay the
9 approximately \$18 million purchase price with funds currently
10 on deposit in various financial institutions, however, a
11 portion of the purchase price may come from other sources, do
12 you see that?

13 A Yes.

14 Q And does that \$18 million include the \$5 million you had
15 borrowed already from Nova Bank?

16 A Yes.

17 Q At some point after June 30th did you apply for financing
18 from another bank to purchase Nova stock?

19 A Not to my knowledge.

20 Q Have you ever heard of a bank called ACBB or Atlantic
21 Central Bankers Bank?

22 A I don't recall.

23 Q All right.

24 MR. IGNALL: If I could bring up Exhibit 67 for the
25 witness right now.

1 Q Do you recognize that document? In particular, if we
2 just go to the bottom, do you recognize the signature at the
3 bottom there?

4 A Yes, that's mine.

5 Q All right. Do you recognize this document at all?

6 A No.

7 Q All right. Let me turn your attention back to Exhibit
8 64.

9 MR. IGNALL: If we could go to the sixth page of
10 Exhibit 64 and blow up the top of that.

11 Q I believe Mr. Egan asked you about this. You see where
12 it says name of acquirer, George G. Levin?

13 A Well, that's -- you just have the one piece here, but --

14 Q Do you see that, the piece on the top there?

15 A It just says provide the following information.

16 Q And you see the box below that?

17 A It says name of each acquirer, George G. Levin, yes.

18 Q Yes. Do you remember Mr. Egan asking you questions about
19 this?

20 A Yes.

21 Q All right. And I assume -- George G. Levin, is that you?

22 A Yes.

23 Q All right. What's the total purchase price there?

24 A Eighteen million.

25 Q Does that include the \$5 million you had borrowed from

Levin - Redirect/Ignall

46

1 Nova Bank?

2 A Yes.

3 Q When it says source and amount of funds, what does that
4 say?

5 A Half from personal finances, half from borrowed funds.

6 Q Do you recall whether Nova Bank ever made an application
7 on your behalf to borrow funds?

8 A I don't recall.

9 Q Going back to Exhibit 67, is that your signature?

10 A Yes.

11 Q All right. Do you remember one way or another whether
12 you made an application to Atlantic Central Bankers Bank?

13 A I don't recall it, no.

14 Q But you believe that's your signature?

15 A Yes, it's definitely my signature.

16 Q You discussed with Mr. Egan that you had gotten stock
17 certificates for Nova Bank?

18 A Yes.

19 Q Had you ever talked to Mr. Hartline about selling that
20 stock?

21 A Probably did, yes.

22 Q And do you remember what Mr. Hartline said?

23 A Obviously it never happened, so --

24 MR. IGNALL: Can we bring up D-56? I may have to
25 ask defense to do that.

Levin - Redirect/Ignall

47

1 Q I believe Mr. Egan asked you about this as well. Do you
2 recall being asked about this e-mail from Mr. Preve to you?

3 A Yes.

4 Q And what's the subject?

5 A Subject is about a company that I owned that had a
6 problem.

7 Q What's the subject line say?

8 A Oh, the subject line, I'm sorry. Have you heard from
9 the Fed or State Banking Department?

10 Q All right. Do you see where Mr. Preve says the
11 application had been pre-filled by Nova, you see that?

12 A Yes.

13 Q Do you know what that means?

14 A I would be guessing, but I --

15 Q I don't want you to guess. Did you ever fill out an
16 application yourself that went to the Federal reserve or the
17 State Banking Department?

18 A It was done and I signed it.

19 Q Mr. Duncan asked you if you had lines of credit outside
20 of Nova Bank, do you remember those questions?

21 A Yes.

22 Q Did you ever use any of those lines of credit to buy Nova
23 stock?

24 A No.

25 Q On October 31st did you learn anything about the

Levin - Redirect/Ignall

48

1 Rothstein Investments that you had?

2 A Yes.

3 Q And did you learn on October 31st that the Rothstein
4 Investments were not worth anything all along?

5 A Yes.

6 Q After October 31st, did you ever tell Mr. Bekkedam that
7 your financial situation had changed?

8 A After October 31st?

9 Q Yes.

10 A Yes.

11 Q Did you ever tell Mr. Hartline your financial situation
12 had changed?

13 A Yes.

14 Q And how did your financial situation change, how much did
15 you think you were worth before October 31st, approximately?

16 A About 400 million plus.

17 Q After October 31st, were you worth anywhere close to
18 that?

19 A No.

20 Q Were you worth more than zero necessarily?

21 A Yes.

22 Q Did -- were there creditors asking for money after that?

23 MR. EGAN: Objection, leading.

24 THE COURT: Leading, sustained. The objection is
25 sustained as to the --

Levin - Redirect/Ignall

49

1 MR. IGNALL: I understands, Your Honor, but --

2 THE COURT: If I may, sir, in your mind based upon
3 what you knew at that point in time, what were you worth?

4 THE WITNESS: It's difficult, but I would say
5 somewhere between 50 to a hundred million.

6 THE COURT: Thank you.

7 Q Did you end up in bankruptcy?

8 A In a -- yes, a Chapter 11 reorganization.

9 Q Had you made guarantees to investors in these various
10 Banyan Funds?

11 A Yes.

12 Q And were any of those investors seeking you to pay off on
13 those guarantees?

14 A Yes.

15 Q Did you have the funds available to pay those guarantees?

16 A No, but eventually everybody got paid back a hundred
17 percent.

18 Q Did you have the funds --

19 A Except me.

20 Q Did you have the funds after October 31st easily
21 available to pay those guarantees?

22 A No.

23 MR. EGAN: Objection, leading.

24 THE COURT: Sustained.

25 Q Did you discuss with Mr. Hartline or, I'm sorry, with Mr.

Levin - Redirect/Ignall

50

1 Bekkedam whether you had the ability to pay back on your
2 guarantees after October 31st?

3 A I don't think we discussed that. I don't remember
4 discussing that. I -- he knew what the problems were. And as
5 I said, I kept paying the interest on these loans.

6 Q No, I -- not the loans. I'm talking about guarantees to
7 Banyan investors.

8 A I don't know if --

9 MR. EGAN: Your Honor, I would just ask that the
10 last response be stricken. It's nonresponsive to Mr. Ignall's
11 question.

12 THE COURT: It is stricken. The jury is to
13 disregard that last response.

14 Q My question was with respect to Mr. Bekkedam did you ever
15 have a conversation about your ongoing ability to pay on the
16 guarantees?

17 A I'm not sure that subject ever came up, to be honest with
18 you.

19 Q Did the subject of your change in financial situation
20 come up with Mr. Bekkedam?

21 A Oh, sure, yes, of course.

22 Q Okay.

23 MR. IGNALL: No further questions.

24 THE COURT: All right.

25 MR. EGAN: May I proceed, Your Honor?

Levin - Recross/Egan

51

1 THE COURT: Yes, sure.

2 RECROSS EXAMINATION

3 BY MR. EGAN:

4 Q Good morning, Mr. Levin.

5 A Good morning.

6 Q Let's start where you ended there. So as I understand
7 your answer to the Court's question, after October 31st you
8 believed you were worth in the neighborhood of 50 to a hundred
9 million dollars, correct?

10 A I had that -- probably.

11 Q Prior to October 31st you believed you were worth \$400
12 million?

13 A Correct.

14 Q And you believe that basically -- well, that's prior. So
15 when you were applying for a loan at Nova Bank in June of
16 2009, you believed you were worth \$400 million, correct?

17 A Yes.

18 Q And you certainly never told Brian Hartline any time
19 before October 31st that you weren't worth \$400 million,
20 correct?

21 A That's correct.

22 Q Because you believed it?

23 A Yes.

24 Q So, and after October 31st, in spite of the fact that you
25 were no longer worth \$400 million, you still had assets?

1 A Yes.

2 Q And you were basically in a position were you had to
3 figure out how to best take care of your creditors, right?

4 A Correct.

5 Q And protect assets, if you could?

6 A Yes.

7 Q So you were basically sorting it out, correct?

8 A Absolutely.

9 Q And I would assume that that type of a mess took quite
10 awhile to sort out?

11 A Yes.

12 Q So certainly in October of 2009 you were in no position
13 to figure out exactly where you stood vis-a-vis the situation?

14 A The 31st of October, right?

15 Q Yeah. Let's just talk November, December because that's
16 what's relevant.

17 A All right. Fine. Yes.

18 Q In November of 2009 you probably weren't sure what you
19 were worth, right?

20 A Correct.

21 Q You were still trying to figure it out?

22 A Yes.

23 Q But while you were doing that you were still paying the
24 Nova loan, correct?

25 A That is correct.

1 Q And while you were still doing it you hadn't told Mr.
2 Hartline I will not invest in Nova stock, correct?

3 A He knew that long before that, I think.

4 Q Well, let's talk a little bit about that, sir, because we
5 talked yesterday and you had said that in October of 2009 you
6 knew that you were still committed to pay the 18 -- to invest
7 the \$18 million in Nova, correct?

8 A You're talking about a signed contract.

9 Q Right.

10 A We're talking about reality.

11 Q Well, I want to talk about your obligation, sir.

12 A Okay. There was a --

13 Q And reality is you --

14 A There was a contract, yes.

15 Q And reality is you had an obligation, correct?

16 A According to the contract, yes.

17 Q Yes, according to the contract. And you, in fact, were
18 hoping -- in spite of what you said to Mr. Duncan this
19 morning, you were hoping not to be approved so that you
20 wouldn't have to fulfill the contract, correct?

21 MR. IGNALL: Objection, beyond the scope of
22 redirect.

23 THE COURT: Sustained.

24 A As I said from the --

25 THE COURT: Just a moment, sir.

Levin - Recross/Egan

54

1 THE WITNESS: I'm sorry.

2 THE COURT: That's all right. Sustained.

3 Q Mr. Levin, you raised some points this morning about
4 having discussed reverse stock split with Mr. Hartline,
5 correct?

6 A Yes.

7 Q And I think with --

8 MR. IGNALL: Objection, beyond the scope of
9 redirect.

10 THE COURT: No, he testified about that.

11 MR. IGNALL: Not on redirect. Maybe during Mr.
12 Duncan --

13 THE COURT: Okay, fine. Nevertheless, he's allowed
14 to go with it. Go ahead.

15 Q Correct?

16 A Please say that again.

17 Q Sure. You talked about basically wanting to get out of
18 your deal, correct?

19 A You're saying that I wanted to get out of the deal from
20 the first day?

21 Q Yes. From the day you --

22 A First day that I looked at the -- really examined the
23 documents.

24 Q Right. So basically, what you told us previously was you
25 didn't really look at this carefully until long after you had

1 committed to it?

2 A I was in St. Thomas when all this went done.

3 Q Right. Trying to --

4 A We were --

5 Q -- not pay taxes basically?

6 A No, that's not true. We were trying to -- there's a much

7 --

8 Q Establish residence.

9 A -- establish residency because there's a much lower tax
10 base there and my tax advisor had advised me to go down there

11 --

12 Q Right.

13 A -- and do that.

14 Q So you'd pay less taxes?

15 A So there would be -- I think it was ten percent instead
16 of 30.

17 Q If I could show you Government's Exhibit 175. Sir, this
18 is a letter dated March 26th, 2010 from Nova Financial
19 Holdings to you, correct?

20 A Yes.

21 Q And this letter addresses the issue you were talking
22 about, wanting to sell your stock, correct?

23 A That's what it is.

24 Q And that's in March of 2010?

25 A Yes.

Levin - Recross/Duncan

56

1 Q Does that refresh your recollection as to when it was you
2 had discussions about selling your stock with Mr. Hartline?

3 A Probably before this, but this was the letter that came
4 out afterwards, sure.

5 Q So it was --at some --

6 A Around that time.

7 Q It was right around that time.

8 MR. EGAN: May I have a moment, Your Honor?

9 THE COURT: Yes, sir.

10 MR. EGAN: I have no further questions.

11 MR. DUNCAN: Very briefly, Your Honor.

12 THE COURT: Yes, sir.

13 RECROSS EXAMINATION

14 BY MR. DUNCAN:

15 Q Hello again.

16 A Hi.

17 Q Sir, Mr. Ignall showed you --

18 MR. DUNCAN: Could we bring up Government 64,
19 please, and publish it to the jury? I believe it's been up
20 during his redirect.

21 Q This is a letter related to your change in control
22 application dated July 21st, 2009, you saw this just a few
23 moments ago with Mr. Ignall, right?

24 A Yes.

25 Q In this letter you said about half your money is going to

1 come from your cash and about half your money is going to come
2 from loans in order to make the \$18 million investment in
3 Nova, correct?

4 A I don't know if this one -- I don't think this --

5 Q Yeah, go to Page 6, please.

6 A Okay. This one --

7 Q Yeah, sure. It's a lot of documents, I know. We've
8 gotten to play with them for a long time. Page 6. You said
9 half from your personal finances, that's your own cash,
10 right?

11 A Correct.

12 Q And then half from borrowed funds, right?

13 A Correct.

14 Q And that's as of July 21st, 2009, correct?

15 A Yes.

16 MR. DUNCAN: Can we go now to Government's 82, and
17 if we could go to the second page of this?

18 Q This is a letter from Mrs. Hartline on September 8th,
19 2009, it's to Pennsylvania Department of Banking, this relates
20 to the change in control application, right?

21 A Yes.

22 Q And if you go to the next page, three, this is a letter
23 on your George G. Levin stationery, right?

24 A Yes.

25 Q And it's written by --

1 MR. DUNCAN: If you go all the way down and show the
2 whole letter.

3 Q It's signed by Mr. Preve, correct?

4 A Yes.

5 Q Mr. Preve is your agent acting in your behalf, correct?

6 A Yes.

7 Q And what he tells Ms. Metcalf (phonetic) is --

8 MR. DUNCAN: And we could go to the next to the last
9 paragraph.

10 MR. IGNALL: I object. I believe this is beyond the
11 scope of redirect.

12 MR. DUNCAN: He asked him about the source of the
13 loans, Your Honor, about whether it was half from loans or
14 half from finances. This is in response to the exhibit we
15 just saw, 64, that he put up there.

16 THE COURT: I'll allow it.

17 MR. DUNCAN: Thank you, Your Honor. So, blow up
18 that last full big paragraph, please.

19 Q So Mr. Preve tells the Pennsylvania regulators that
20 things had now changed, the bottom line is that we expect our
21 factoring business to consume less cash in Fiscal Year 2009.
22 The factoring business, that's the settlement funds, right?

23 A That would be the settlement funds.

24 Q That it had in previous years, thus converting
25 approximately \$82 million in receivables to cash, right?

1 A Correct.

2 Q So you're now going to have \$82 million in cash, correct?

3 A Correct.

4 Q And that's out of a total portfolio of approximately \$450
5 million, correct?

6 A Correct.

7 Q So, and then you say or Mr. Preve says on your behalf,
8 this free cash flow will be utilized to cover the Nova Bank
9 investment as well as other short term investments. You can
10 pay the whole 13 million out of cash now, can't you?

11 A That says all of which matures in less than 12 months,
12 and you're correct, we could have paid it.

13 Q You didn't need the loan any more, did you?

14 A No. Never needed it.

15 Q So, I'm sorry, I know this is a sore subject for you, but
16 let's go back to late October 2009. You testified previously
17 you had good reason to believe that the Rothstein Settlement
18 funds were legitimate, correct?

19 A Yes.

20 MR. DUNCAN: And if we could keep -- if we could
21 keep that exhibit up, please.

22 Q One of the reasons you believed -- that you had good
23 reason to believe this is that you had audited financials of
24 these settlement funds, correct?

25 A Our company and the other company, Rothstein's company.

1 Q And by audited financials that means you had
2 professionals come in, do their due diligence, and then tell
3 you the money is there in TD Bank, correct?

4 A We even had the same firm to make sure that was true.

5 Q And so the answer to my question is yes, right?

6 A Yes.

7 Q Okay. And you also had people in TD Bank who confirmed
8 for you that the funds were in TD Bank, correct?

9 MR. IGNALL: Objection. I'd like to be heard at
10 sidebar.

11 THE COURT: You may approach.

12 (Sidebar begins at 11:44:08)

13 THE COURT: Yes, sir?

14 MR. IGNALL: My understanding was the question would
15 be whether audited financials would hold back Mr. Bekkedam so
16 there wouldn't be an inference that Mr. Bekkedam didn't know
17 better. We go into the details now, we're leading into a
18 story that I think is irrelevant and indeed --

19 THE COURT: I agree.

20 MR. IGNALL: And indeed someone at TD Bank was
21 prosecuted for this.

22 THE COURT: And you can end up opening doors that
23 you don't want to open up. I'll hear you, counsel.

24 MR. DUNCAN: It goes to his due diligence, Your
25 Honor, that he had a good faith reason to believe that the

Levin - Recross/Duncan

61

1 money was there. It wasn't just his idea.

2 THE COURT: He has testified, in my opinion,
3 unequivocally, that he didn't know. He relied on the other
4 people who were professionals. Any more to do? Anything else
5 you need to put in?

6 MR. DUNCAN: I wanted to show him the actual
7 document.

8 THE COURT: Okay.

9 MR. DUNCAN: Can we have a second, Your Honor?

10 THE COURT: Go right ahead.

11 MR. DUNCAN: Your Honor, I'll agree with the court.
12 We'll stop right there.

13 THE COURT: Mr. -- just have a couple -- two more,
14 maybe, maybe two more. Two more questions.

15 (Sidebar ends at 11:45:31)

16 MR. DUNCAN: Thank you, Your Honor. May I proceed,
17 Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. DUNCAN:

20 Q Mr. Levin, you communicated to Mr. Bekkedam the due
21 diligence you had done with respect to the settlement funds,
22 correct?

23 A Yes.

24 Q So he knew what you knew, correct?

25 A Yes.

Levin - Further Redirect/Ignall/Further Recross/Egan 62

1 MR. DUNCAN: Thank you. I have no further
2 questions, Your Honor.

3 MR. IGNALL: One moment, Your Honor. One question,
4 Your Honor. May I?

5 THE COURT: Yes, sir.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. IGNALL:

8 Q Mr. Egan on recross asked you if after October 31st you
9 still had assets, do you remember those questions?

10 A Yes.

11 Q Did you ever sell any of those assets to pay off the Nova
12 loan?

13 A No.

14 Q Did you ever pay off the Nova loan?

15 A No.

16 MR. IGNALL: Okay. No further questions.

17 THE COURT: Anything further?

18 MR. DUNCAN: I'm good, Your Honor. Thank you.

19 MR. EGAN: If I may, Your Honor.

20 THE COURT: Yes.

21 FURTHER RECROSS EXAMINATION

22 BY MR. EGAN:

23 Q We covered this, but the Nova loan was put into your
24 bankruptcy petition, correct?

25 A Yes.

Levin - Further Recross/Egan

63

1 Q And so you had it discharged in bankruptcy, correct?

2 A I don't know if it was discharged. That's still open.

3 MR. EGAN: No further questions, Your Honor.

4 MR. IGNALL: Nothing further, Your Honor.

5 THE COURT: Thank you, sir. You may step down.

6 THE WITNESS: Thank you.

7 THE COURT: Watch your step, please. All right.

8 We're going to take our luncheon recess at this time until one
9 o'clock this afternoon. One o'clock this afternoon. Thank
10 you.

11 COURTROOM DEPUTY: All rise.

12 (Jury out)

13 THE COURT: All right, one o'clock. Thank you.

14 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

15 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

16 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

17 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

18 (Recess)

19 THE COURT: Ready?

20 UNIDENTIFIED ATTORNEY: Yes, Your Honor.

21 MR. SCHWARTZ: Your Honor, we have one matter to
22 address with regard to this witness before the jury.

23 THE COURT: All right.

24 MR. SCHWARTZ: Your Honor, Joel Schwartz for the
25 defense.

1 THE COURT: You may be seated.

2 MR. SCHWARTZ: Your Honor, we've had a great deal of
3 litigation with regard to Ms. Musser and the relevance of her
4 testimony and Your Honor has made some limiting instructions
5 and the Government and the defense have talked about that.
6 But in light of what the jury has heard and all of the
7 complicated information that has come to its attention about
8 loans and propriety of loans and the loans that are at issue
9 with regard to these charges, we would ask the Government for
10 an offer of proof with regard to the continuing relevance of
11 Ms. Musser. The fact of the matter is, Your Honor, it seems
12 like it's kind of a very prejudicial attempt to tie Mr.
13 Bekkedam to the bank by adducing evidence about her experience
14 with a line of credit, a loan, that has nothing to do with the
15 charges and that occurred in 2005.

16 Now, the -- you have seen all that the just has had
17 to deal with in terms of getting information from lay
18 witnesses and from regulators and from bankers about these
19 particular loans that are at issue. Now the jury is going to
20 hear about yet another loan that is not contemporaneous with
21 the activity ands has nothing to do with TARP or any of the
22 charges. So, if there is still any relevance with regard to
23 Ms. Musser we respectfully would ask the Government to proffer
24 it.

25 THE COURT: Counsel?

1 MR. IGNALL: Your Honor, I thought we had already
2 been through this with the motion in limine, so I'm not sure
3 --

4 THE COURT: I frankly don't recall, so refresh my
5 recollection if you don't mind, as to Ms. Musser.

6 MR. IGNALL: Yeah. And I'm not sure what's changed
7 during the course of the trial, but I'm certainly happy to
8 address that, Your Honor. My examination of Ms. Musser I
9 intend to be rather brief.

10 THE COURT: What's her first name, please?

11 MR. IGNALL: Hilary.

12 THE COURT: Two L's?

13 MR. IGNALL: I believe --

14 THE COURT: One L?

15 MR. IGNALL: -- it's one L. There are two S' in
16 Musser.

17 THE COURT: She's not running for president then, I
18 guess.

19 (Laughter)

20 THE COURT: All right. Yes, sir?

21 MR. IGNALL: I do anticipate her -- asking her about
22 the line of credit she had with Nova Bank for a couple of
23 reasons. First of all, that line of credit extended into
24 2009. It was still open at that point. But moreover, it goes
25 to Mr. Bekkedam's motive and his relationship with the bank,

1 which is what we explained during the motion in limine argument,
2 that we heard during the opening statement that Mr. Bekkedam
3 did not have any official role at the bank after 2007, and
4 that, in fact, he did not deal with any regulators, which I
5 think are both true.

6 Ms. Musser, I anticipate, will testify that she was
7 a Ballamor client. We're -- we've agreed we're not going to
8 get into how much money she lost -- I think that was really
9 the crux of the motion in limine -- but that she did invest
10 with Mr. Bekkedam and she did so out of a line of credit and
11 then Mr. Bekkedam got her to move the line of credit from PNC
12 Bank to Nova Bank. She'll talk about --

13 THE COURT: In what year?

14 MR. IGNALL: I believe that was 2005. But that's a
15 line of credit that remained open through 2009. And that --
16 she will talk about how Mr. Bekkedam described his
17 relationship with the bank even after he was no longer the
18 chairman in 2007. Now the line of credit is relevant to show
19 that Mr. Bekkedam has some influence over the bank. It also
20 goes to show his motive and incentive to get the \$13 million
21 in TARP funding to keep Nova afloat. If he has current --
22 then current clients who have lines of credit with the bank he
23 certainly would like to keep the bank afloat for his clients'
24 benefit, which would derivatively benefit him.

25 I don't know what -- the confusion or any unfair

1 prejudice that would come from that. If there's a limiting
2 instruction that the defense wishes to have the Court read to
3 the jury I'd certainly be willing to talk about something to
4 agree to. But I don't see any risk of unfair prejudice and I
5 think it allows the jury to understand Mr. Bekkedam's role.
6 And then we'll talk about what conversations Ms. Musser had
7 with Mr. Bekkedam in 2009 about raising money for Nova Bank,
8 about the TARP, and about Mr. Levin.

9 THE COURT: All right, thank you. Counsel?

10 MR. SCHWARTZ: Of all the Ballamor clients whom the
11 Government could have brought in, they chose to bring in a
12 woman who is furious with Mr. Bekkedam, had sued Mr. Bekkedam
13 and has been sued by the bank for failing to pay that line of
14 credit. All of those --

15 THE COURT: Is that admissible, any of those three?

16 MR. SCHWARTZ: No, but it's --

17 THE COURT: One second. One second. Accepting that
18 they're not admissible, is the Government going to attempt to
19 introduce those?

20 MR. IGNALL: No. That was part of the motion in
21 limine as well and we reached an agreement that we were not
22 going to go into Ms. Musser's bias. I understood that defense
23 counsel was not going to because her bias would necessarily
24 elicit information that the defense is concerned would, you
25 know, impugn Mr. Bekkedam's integrity in some way. So I do

1 not anticipate asking her any questions that would go to her
2 bias --

3 THE COURT: All right.

4 MR. IGNALL: -- and I've instructed her so.

5 THE COURT: All right. Yes, counsel?

6 MR. SCHWARTZ: If Ms. Musser is going to talk about
7 how she was driven to invest in Ballamor or to keep her loan
8 from Nova in order to make investments in Ballamor this is
9 going to be about her anger with Mr. Bekkedam about what he
10 and his people at Ballamor did in terms of advising her with
11 regard to her money. This is going to be a trial about the
12 quality of the Ballamor Capital Group as investment advisors.
13 That is completely distracting from the jury.

14 THE COURT: Accepting that none of that information
15 is going to come before the jury by reason of the Government's
16 proffer and accepting that a number of the things that counsel
17 for the Government has proffered which would result in yes or
18 no answers to a number of questions, I would assume --

19 MR. IGNALL: Your Honor, I'm happy to bring Ms.
20 Musser in before the jury and we can instruct her not to
21 express her opinion about what she thought about Mr. Bekkedam
22 --

23 THE COURT: You can tell her that in private.

24 MR. IGNALL: Which I already have.

25 THE COURT: She's sitting right there behind you.

1 MR. IGNALL: Okay.

2 THE COURT: Or public for that matter.

3 MR. IGNALL: No, I don't think she's in the
4 courtroom, Your Honor.

5 THE COURT: Okay. All right. My apologies.
6 Someone was very animated out in the audience. I thought it
7 was her. My apologies. All right.

8 MR. IGNALL: No, I don't see her here, Your Honor.

9 THE COURT: All right. You can go out and tell her.

10 MR. IGNALL: I've already spoken to her. I didn't
11 know if the Court wanted that on the record. I already told
12 her that.

13 THE COURT: No, not necessarily.

14 MR. IGNALL: Okay.

15 THE COURT: I'm satisfied. You're an officer of the
16 Court.

17 MR. IGNALL: Okay.

18 THE COURT: Counsel?

19 MR. EGAN: Yes, Your Honor. The instruction that I
20 requested the other day, the parties have agreed that it would
21 be appropriate to read it at this point.

22 THE COURT: All right. Just a moment.

23 MR. EGAN: I have another copy in case you need it.

24 THE COURT: No. I better have it. Yes. Font's a
25 little small, but I --

1 MR. IGNALL: Just to be double, triple safe, may I
2 go speak to Ms. Musser for a minute right now?

3 THE COURT: Go right ahead.

4 UNIDENTIFIED ATTORNEY: Apologies, Your Honor.

5 (Pause)

6 MR. EGAN: Thank you. I'll make the next one
7 bigger.

8 THE COURT: Thank you. It's a secret only she and I
9 know.

10 MR. IGNALL: Thank you, Your Honor. I re-reminded
11 her.

12 THE COURT: All right. Thank you. Okay. Are we
13 otherwise ready?

14 UNIDENTIFIED ATTORNEY: Yes, Your Honor.

15 UNIDENTIFIED ATTORNEY: Yes, Your Honor.

16 MR. DUNCAN: Just --

17 THE COURT: Yes, sir?

18 MR. DUNCAN: We're going to go first, so when Mr.
19 Ignall is done we'll take over the cross examination first.

20 THE COURT: Very well.

21 MR. DUNCAN: Thank you, Your Honor

22 THE COURT: Fine. Okay.

23 COURTROOM DEPUTY: All rise.

24 (Jury in)

25 COURTROOM DEPUTY: Ladies and gentlemen, we are

1 back on the record.

2 THE COURT: Good afternoon. You may be seated.
3 Members of the jury, at the outset of this trial I informed
4 you that I would give instructions and the law to you at the
5 close of the case, but also during the course of the trial.
6 I'm going to give you an instruction at this time, which is
7 nothing more at this point than a reminder of the law
8 applicable to the evidence in this case, and I will certainly
9 repeat this instruction at the conclusion of the trial.

10 Mr. Bekkedam and Mr. Hartline are charged with some
11 offenses in common, however, Mr. Bekkedam is also charged in
12 five and -- in Counts 5 and 6 with wire fraud. Mr. Hartline
13 is not charged with wire fraud. At various points throughout
14 the trial you will hear evidence that relates only to the wire
15 fraud charge against Mr. Bekkedam. I instruct you that you
16 should not consider this evidence against Mr. Hartline in any
17 way. The evidence is not relevant to the charges against Mr.
18 Hartline and it would be improper for you to consider it when
19 you evaluate whether the prosecution has proven Mr. Hartline
20 guilty beyond a reasonable doubt as to the charges against
21 him. All right. You may continue.

22 MR. IGNALL: Thank you.

23 (1:28:17 to 1:59:29 previously transcribed)

24 MS. BARRY: Your Honor, the United States calls
25 William Sayre.

1 MR. IGNALL: Your Honor, I believe this next witness
2 needs a moment. He should be here shortly.

3 THE COURT: Surely.

4 MS. BARRY: Oh, sorry about that.

5 MR. EGAN: And, Your Honor, could we see you during
6 that moment?

7 THE COURT: Certainly.

8 (Sidebar begins at 2:00:22)

9 MR. EGAN: Your Honor, this is the witness about
10 whom we had the lengthy discussion this morning.

11 THE COURT: Yes, sir.

12 MR. EGAN: And I just want to make sure before the
13 Government proceeds that we understand how far they're going
14 and whether -- -and what Your Honor's ruling was.

15 THE COURT: Can you give us a proffer?

16 MS. BARRY: Yes, Your Honor. Mr. Sayre is going to
17 say that they had a loan request coming in for \$9 million,
18 which was consistent with their advertisement about providing
19 financing for the purchase of stock, which would be up to 50
20 percent, and that's why it makes sense that the \$18 million --
21 they were asking for a \$9 million loan because they sent the
22 information that he was going to be investing \$18 million, so
23 that's consistent with the \$9 million request. The witness is
24 going to say he had a conversation with Mr. Hartline and said,
25 you know, \$9 million is above the lending limit, but Mr.

1 Hartline said please consider the loan anyway for whatever
2 amount he will be approved for.

3 THE COURT: And can I just as --

4 MR. BARRY: Yes?

5 THE COURT: You're going from the advertisement?

6 MS. BARRY: Yes, there is --

7 THE COURT: How much?

8 MS. BARRY: Fifty percent of any investment for
9 stock options.

10 THE COURT: And if that 50 percent exceeded nine
11 million -- and if that 50 percent exceeded five million it
12 couldn't be possible -- it wouldn't be possible?

13 MS. BARRY: No, no, the -- their lending limit was
14 around seven.

15 THE COURT: Okay. So if 50 percent of anything was
16 seven or below it's okay, it could be considered?

17 MS. BARRY: It could be, right. Yes.

18 THE COURT: Okay. All right.

19 MS. BARRY: Yes. So they advised Mr. Hartline that
20 the \$9 million was larger than what they may consider and he
21 said please consider it anyway.

22 THE COURT: Okay.

23 MS. BARRY: So they went on to evaluate the loan.
24 I'm going to ask what did they review and not ask specifics
25 about his conversations necessarily about the results of

1 those. He reviewed the condition of the bank because the
2 stock would be the collateral for the loan and then he
3 reviewed the financial condition of the borrower. And based
4 on the review of those two things they denied the loan. And
5 I'm not going to go into the specifics of him being
6 uncreditworthy.

7 THE COURT: Okay.

8 MR. EGAN: And their denial of the loan to me, Your
9 Honor, is irrelevant and prejudicial.

10 UNIDENTIFIED ATTORNEY: Your Honor, if everyone else
11 is done --

12 THE COURT: Just one second. Let me just hear your
13 response to it.

14 MS. BARRY: How is it prejudicial that he was denied
15 the loan?

16 MR. EGAN: Because the -- well, the jury will infer
17 from they denied the loan that he might not be creditworthy.

18 MS. BARRY: Well, either we can specify all of the
19 reasons or we can just not specify all the reasons. I thought
20 it would be less prejudicial to --

21 THE COURT: Did it come out thus far that he did not
22 secure a loan from ACCB (sic)?

23 UNIDENTIFIED ATTORNEY: No, it did not.

24 THE COURT: It has not come out at all?

25 UNIDENTIFIED ATTORNEY: No.

1 THE COURT: Okay. When he was asked the question
2 was there an objection to the question?

3 UNIDENTIFIED ATTORNEY: About applying, no, because
4 --

5 THE COURT: So he could have answered it?

6 UNIDENTIFIED ATTORNEY: -- of their discussion this
7 morning.

8 UNIDENTIFIED ATTORNEY: Yes.

9 THE COURT: Okay. I'm going to allow it.

10 MS. BARRY: Thank you.

11 UNIDENTIFIED ATTORNEY: Your Honor, may I --

12 THE COURT: Yes, sir.

13 UNIDENTIFIED ATTORNEY: -- just be heard on one more
14 point? Mr. Levin has now testified that after the time of
15 this loan that he had (indiscernible) in cash coming in and
16 that he wasn't going to use any loan proceeds in order to pay
17 it. It had no relevance this morning and it has much less
18 relevance now.

19 THE COURT: It's something he testified to. The
20 jury can accept that testimony or they can reject that
21 testimony, they can believe it or they can disbelieve it. If
22 they accept it and they disbelieve what's coming on now, then
23 the ball goes back in your favor.

24 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

25 THE COURT: That's what the jury's for.

Sayre - Direct/Barry

76

1 MS. BARRY: Your Honor, just a request that it's one
2 lawyer that will speak on behalf of each party. Is that still
3 the rule?

4 THE COURT: It wasn't violating this rule I was --
5 my law clerk has been here --

6 UNIDENTIFIED SPEAKER: I was the one taking notes.

7 THE COURT: Okay.

8 (Sidebar ends at 2:04:28)

9 COURTROOM DEPUTY: Please raise your right hand.

10 WILLIAM SAYRE, WITNESS, SWORN

11 COURTROOM DEPUTY: Please state your name and spell
12 your last name for the record.

13 THE WITNESS: William H. Sayre, S, as in Sam,
14 a-y-r-e.

15 MS. BARRY: May I proceed, Your Honor.

16 THE COURT: You may proceed.

17 MS. BARRY: Thank you.

18 DIRECT EXAMINATION

19 BY MS. BARRY:

20 Q Good afternoon, Mr. Sayre. Would you please tell the
21 members of the jury where you work?

22 A I work for Atlantic Community Bankers Bank.

23 Q And what is Atlantic Community Bankers Bank?

24 A Atlantic Community Bankers Bank, which I may also refer
25 to as ACBB for brevity's sake, is a bank for banks, so

Sayre - Direct/Barry

77

1 effectively we act as a -- our customers are community banks
2 throughout the Mid-Atlantic States.

3 Q Okay. So you provide banking services for banks
4 themselves?

5 A Yes.

6 Q Okay. And so is an average person someone who would have
7 deposits with ACBB?

8 A No, we're prohibited by charter and by law from taking
9 deposits or making loans to the regular public.

10 Q Okay. But, are there certain individuals to whom you may
11 make loans?

12 A Yes, we can make loans and do make loans to executives,
13 significant shareholders or directors of community banks
14 typically secured by the stock of the community bank that they
15 would be affiliated with.

16 Q And, sir, what is your position with ACBB?

17 A I'm an executive vice president and chief credit officer.

18 Q And how long have you been with ACBB?

19 A I joined the bank August 8th of 2005, so I guess, what,
20 ten-and-a-half years.

21 Q Okay. And what are your duties as the chief credit
22 officer?

23 A I'm in charge of the risk and managing the risk for the
24 bank as it relates to loans and loan products.

25 Q And I'd like to turn your attention to Government's

Sayre - Direct/Barry

78

1 Exhibit 18.

2 MS. BARRY: And if it may just be shown to the
3 witness, please.

4 Q And specifically, the second page of Government's Exhibit
5 18. Do you recognize what this document is?

6 A Yes, that would be a summary of our bank stock loan
7 program, so essentially it would outline the general
8 parameters and conditions under which we would offer this
9 particular type of loan product.

10 Q Okay. And to whom was -- is this being -- was this
11 advertised in some way?

12 A No. We would typically distribute this to our client
13 banks, to the executives or -- who work for those client banks
14 to see if there was a need or interest from either their
15 directors or executive management for this type of product.

16 Q Okay. So would this type of product be something where a
17 large investor or somebody -- or a director of a community
18 bank, if they wanted to purchase stock, could use, is this a
19 product they could use?

20 A Yes.

21 Q Now, according to the -- this particular product from
22 ACBB, what percentage would ACBB provide in terms of a loan?

23 A Fifty percent or half of the amount of the value of the
24 stock purchase price.

25 Q Okay. And was this a product that was available in or

Sayre - Direct/Barry

79

1 about June or July of 2009?

2 A Yes.

3 Q Now, are you familiar with a bank called Nova Bank?

4 A Yes.

5 Q And how are you familiar with Nova Bank?

6 A They were a client bank of ACBB's and then they purchased
7 Pennsylvania Business Bank, which had been also another client
8 bank of ACBB's, and we had had an extensive relationship with
9 ACBB, including a number of loan participations back and
10 forth, as well as a stock loan to one of the executives with
11 Pennsylvania Business Bank.

12 Q So you were familiar then with Nova Bank as one of the
13 correspondent banks that you worked with at ACBB?

14 A Yes.

15 Q Now, in or around June or July of 2009, do you recall
16 whether or not Nova Bank made a loan request from ACBB?

17 A Yes.

18 Q And what was the loan request?

19 A The loan request was to provide a loan of -- ideally of
20 \$9 million secured by Nova Bank stock to a substantial
21 investor by the name of George Levin.

22 Q And did information related to this loan request come to
23 ACBB?

24 A Yes.

25 Q And I'd like to turn your attention, please, to what's

Sayre - Direct/Barry

80

1 been marked as Government's Exhibit 67.

2 MS. BARRY: And if I may approach, Your Honor, it
3 may be easier for the witness to have the full document.

4 THE COURT: Surely.

5 Q And if you take a look at Government's Exhibit 67 and it
6 may make sense to start at the last page of that exhibit. And
7 what are -- what is Government's Exhibit 67?

8 A There's a cover letter from Nova Bank that outlines the
9 information that's attached and enclosed with respect to a
10 loan request, as stated on this cover letter, of \$9 million
11 for Mr. George Levin. And then the first page of the exhibit
12 is an Atlantic -- and you'll notice that it says Atlantic
13 Central Bankers Bank. We changed our name from Atlantic
14 Central Bankers Bank to Atlantic Community Bankers Bank
15 several years ago. But this is one of our internal forms, an
16 addendum to the personal financial statement, and this is
17 filled out. And then there is a personal financial statement
18 as it's titled George and Gayla Levin.

19 Q Okay. And so looking at that last page, does it indicate
20 the information that is being provided to ACBB to consider a
21 \$9 million loan to George Levin?

22 A Yes.

23 Q Okay. And the different bullet points, is -- does the
24 that -- are those the documents that were sent for ACBB's
25 review?

Sayre - Direct/Barry

81

1 A Yes.

2 Q Okay. And did you, in fact, receive those documents?

3 A Yes.

4 MS. BARRY: And I'd like to approach, Your Honor,
5 with Government's Exhibit 67(a).

6

7 THE COURT: Surely.

8 Q And looking at Government's Exhibit 67(a) what are those
9 documents?

10 A The first page is a biographical sketch of George Levin.
11 There is a -- the tax return of Mr. Levin for 2006. At some
12 point in time it breaks to 2007, that would be at the end of
13 Page 48, I guess. There's a 2007 tax return for Mr. Levin.

14 Q And it may help you to look at Page 99.

15 A There's a copy of his extension for 2008 where it's just
16 a form that says you've extended your taxes. And then there
17 is -- starting on Page 99 of 138, there's a change in control
18 notice, which is provided to the bank regulators when someone
19 is making a substantial investment in a bank or bank holding
20 company. I believe it's in excess of 9.9 percent that
21 requires the approval of the regulatory authorities.

22 Q And so are the documents that are within Government's
23 Exhibit 67 and 67(a) consistent with what was sent to ACBB by
24 Nova Bank on or about July 24, 2009?

25 A Yes.

Sayre - Direct/Barry

82

1 MS. BARRY: Your Honor, the Government moves for the
2 admission of Government's Exhibit 67 and 67(a).

3 UNIDENTIFIED ATTORNEY: No objection.

4 UNIDENTIFIED ATTORNEY: No objection.

5 THE COURT: Admitted.

6 MS. BARRY: And, Your Honor, if the last page of
7 Government 67 may be published to the jury.

8 THE COURT: Yes.

9 UNIDENTIFIED ATTORNEY: No objection.

10 UNIDENTIFIED ATTORNEY: No objection.

11 Q So looking at this letter, what is the date of this
12 letter, please?

13 A July 24th, 2009.

14 Q And who is Bernadette Kibe?

15 A Bernadette Kibe worked for me and was in charge of our
16 direct stock loan program.

17 Q Okay. And looking at the bullet points of the
18 information that was provided to you or provided to ACBB, is
19 that information consistent with the request -- is that
20 information consistent with the information from Government's
21 Exhibit 18, the second page, of the information required for
22 the bank stock loans?

23 A Yes.

24 Q Now, did you have any conversations with anyone at Nova
25 Bank about this borrower, George Levin, making -- or trying to

Sayre - Direct/Barry

83

1 receive a loan of \$9 million?

2 A Yes, I did.

3 Q And who did you have a conversation with?

4 A Brian Hartline.

5 Q Okay. And who is Brian Hartline?

6 A Brian Hartline was the president and chief executive
7 officer of Nova Bank.

8 Q And when you first received the application or early on,
9 did you have a conversation with him?

10 A Yes.

11 Q And what was that conversation about?

12 A We discussed the fact that the loan amount of \$9 million
13 was in excess of ACBB's legal lending limit and we certainly
14 could not entertain a loan of that size nor was it likely that
15 we could find a partner that would consider a loan of that
16 request, of that size. It was also in excess of our in-house
17 limit. The -- at that point in time the largest loan that we
18 probably had made to any individual borrower would have been
19 just over approximately \$5 million. In addition, we had a
20 discussion relative to the financial condition of Mr. Levin.

21 Q Okay.

22 MS. BARRY: And if we could, please, and if it could
23 be published, Government's Exhibit 67(a), it would be Page 103
24 of 138.

25 Q And, sir, you could take a look at that also.

Sayre - Direct/Barry

84

1 MS. BARRY: And if that may be published, please.

2 THE COURT: Certainly.

3 Q Do you have that in front of you?

4 A I do.

5 Q And let's just wait for Agent Boyer (phonetic) to get us
6 to Page 103. And is Page 103 part of the application to the
7 federal regulators about a change in control for Mr. Levin
8 making the stock purchase?

9 A It is.

10 Q Okay. And looking at that application, what is the
11 purchase price of these stocks that Mr. Levin is going to
12 borrow -- or, I'm sorry, is going to make of Nova Bank's
13 stock?

14 A Eighteen million dollars.

15 Q And so is that consistent -- looking at the next line,
16 half from personal finances, half from borrowed funds, is the
17 \$9 million request consistent with that?

18 MR. EGAN: Objection, leading.

19 THE COURT: Sustained.

20 Q Looking at the application, although the -- do you know
21 where the \$9 million request came from based on the
22 information that was sent to you from Nova Bank?

23 A It corresponds to 50 percent of the proposed purchase
24 price for the stock.

25 Q Okay. And is that also consistent with Government's

Sayre - Direct/Barry

85

1 Exhibit 18, Page 2 of the stock loan that ACBB had told its
2 correspondent's banks it would make?

3 MR. EGAN: Objection, leading.

4 THE COURT: Sustained.

5 Q Was that consistent with Page 2 of Government's Exhibit
6 18?

7 A Yes.

8 MR. EGAN: Same objection.

9 THE COURT: Go right ahead.

10 A Yes, our stock loan has a 50 percent advance rate
11 parameter contained in it and that is consistent with that
12 advance rate.

13 Q Now, when you advised Mr. Hartline that \$9 million was
14 beyond the lending limit for ACBB what did he say in response
15 to that?

16 A He understood that that amount was in excess of what we
17 could accommodate, but suggested that we do what we could and
18 consider what we could within the parameters that we had to
19 deal with.

20 Q Okay. And so did you go through the process then of
21 reviewing the information for the loan?

22 A Yes.

23 Q And when you were reviewing information to make this loan
24 approval what are the things that you would consider?

25 MR. EGAN: Objection.

Sayre - Direct/Barry

86

1 THE COURT: Sustained. Counsel, may I see you,
2 please?

3 (Sidebar begins at 2:21:11)

4 THE COURT: Okay. Now we are in the area where she
5 needs to lead or else it goes outside of our --

6 MS. BARRY: That's what I was trying to do.

7 MR. EGAN: We are already in the area where we were
8 outside our instruction, Your Honor, his consideration and
9 what he looked at to consider is, I thought, outside the
10 limits, which is why I mad the objection. I think the only
11 question left is, did he get the loan.

12 MS. BARRY: No, Your Honor, I'm going to -- the
13 issue was why was he denied the loan because he wasn't
14 creditworthy. I'm not asking questions about whether or not
15 he was creditworthy. I'm going to ask what does -- what are
16 the things that the loan review entails, review of the bank,
17 review of the borrower, and was he given the loan? No.

18 MR. EGAN: And that implies the answer, Your Honor.

19 MS. BARRY: And also, most significantly, whether or
20 not he was told by anyone at the bank that on June 30th that
21 Nova Bank had made a loan of \$5 million to Mr. Levin for the
22 purchase of stock.

23 THE COURT: We'll take a brief recess at this time,
24 please.

25 COURTROOM DEPUTY: All rise.

Sayre - Direct/Barry

87

1 (Jury out)

2 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

3 THE COURT: Sir, you could step down. Do you want
4 to just dismiss the --

5 UNIDENTIFIED ATTORNEY: No problem.

6 THE COURT: We're going to take a ten-minute recess.
7 All right, sorry.

8 UNIDENTIFIED ATTORNEY: Should we go back to our
9 battle stations or stay here, if it's okay?

10 THE COURT: Now, keeping brevity in mind, let's go
11 back over what the parameters were before we go for lunch
12 today regarding this issue.

13 UNIDENTIFIED ATTORNEY: My understanding, Your
14 Honor, is that they're not ask as to why he did not receive
15 the loan.

16 THE COURT: Do you disagree or agree with that?

17 MS. BARRY: I'm not asking why he was -- why the
18 loan was not -- we're not asking him why.

19 THE COURT: Okay, now, what counsel is arguing is is
20 that if that's accepted, then to ask him the other questions
21 that you wish to ask, the jury can infer why he was denied the
22 loan.

23 MS. BARRY: Well, I think we --

24 THE COURT: Even though there's one speaking, you
25 can confer, or you can say this privately.

Sayre - Direct/Barry

88

1 (Court spoke on another matter)

2 MS. BARRY: Your Honor?

3 THE COURT: Yes, ma'am?

4 MS. BARRY: My next question would be, I would like
5 to lead -- have a little leeway for leading.

6 THE COURT: Sure.

7 MS. BARRY: Were there a number of things that you
8 considered in reviewing the loan?

9 UNIDENTIFIED ATTORNEY: (indiscernible).

10 UNIDENTIFIED ATTORNEY: Your Honor, I'm fine if Mr.
11 Ignall wants to speak.

12 THE COURT: Go ahead.

13 MR. IGNALL: I don't want Ms. Barry to kick me if I
14 say something she doesn't like.

15 UNIDENTIFIED ATTORNEY: We might like it if she did.

16 UNIDENTIFIED ATTORNEY: I told him I was going to
17 buy him shin guards for the trial.

18 THE COURT: You're trying to put words in my mouth,
19 counsel.

20 (Court spoke on another matter)

21 THE COURT: Yes, ma'am?

22 MS. BARRY: Okay, the next three questions will be
23 did anyone at Nova Bank give you information on this loan
24 which I think is yes. Did anyone from Nova Bank tell you
25 there was a \$5 million loan to Mr. Levin to buy Nova stock?

Sayre - Direct/Barry

89

1 The answer will be no. Was he given the loan? No.

2 THE COURT: Accepted?

3 UNIDENTIFIED ATTORNEY: Yes, Your Honor.

4 THE COURT: Good, because I was going to shove it
5 down your throat. I try to be smarter than that.

6 MS. BARRY: Thank you.

7 UNIDENTIFIED ATTORNEY: Could we be excused now,
8 Your Honor?

9 THE COURT: Yes, sir.

10 (Recess)

11 COURTROOM DEPUTY: All rise.

12 (Jury in)

13 COURTROOM DEPUTY: Ladies and gentlemen, we are back
14 on the record.

15 THE COURT: Good afternoon. You may be seated.
16 Thank you. You may proceed.

17 MS. BARRY: Thank you, Your Honor.

18 Q Mr. Sayre, did you ever have a conversation with the
19 borrower, George Levin, about his loan?

20 A No.

21 Q In your experience was that unusual?

22 A Yes.

23 MS. BARRY: Your Honor, the Government moves for the
24 admission of Government's Exhibit 18 and I believe that
25 there's an agreement.

Sayre - Cross/Egan

90

1 UNIDENTIFIED ATTORNEY: No objection.

2 UNIDENTIFIED ATTORNEY: No objection.

3 THE COURT: All right, admitted.

4 MS. BARRY: And, Your Honor, if Page 2 may be
5 published to the jury?

6 THE COURT: Granted.

7 Q Mr. Sayre, looking at Page 2 of Government's Exhibit 18,
8 and you testified about it -- about this briefly before, and
9 just can you explain what this is again?

10 A This essentially was an outline of our bank stock loan
11 program so it would outline the parameters under which we
12 would structure such a loan facility and the information that
13 would be required for us to consider such a facility.

14 Q Okay, and looking right on loan amount, again, is that
15 where it's indicated that the loan would not exceed 50
16 percent?

17 A Yes.

18 Q And do you know whether or not Mr. Hartline knew the
19 guidelines of the ACBB bank stock loans program?

20 A I believe he did.

21 Q Now, when it came to this loan for Mr. Levin, did you
22 receive information from Nova Bank?

23 A Yes.

24 Q And did anyone from Nova Bank tell you that Mr. Loan --
25 that Mr. Levin had a \$5 million loan from Nova Bank to

Sayre - Cross/Egan

91

1 purchase Nova stock?

2 A No.

3 Q Did you or anyone at ACBB approve a loan to George Levin?

4 A No.

5 MS. BARRY: No further questions, Your Honor.

6 THE COURT: Counsel, you want to proceed?

7 MR. EGAN: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. EGAN:

10 Q Good afternoon, Mr. Sayre.

11 A Good afternoon.

12 Q You are -- I'm sorry, your title is what?

13 A Executive vice president.

14 Q And there was more to it.

15 A Chief credit officer.

16 Q Chief credit officer. And you talked about a Bernadette,
17 am I correct?

18 A Bernadette Kibe, correct.

19 Q Bernadette Kibe. And Bernadette Kibe is the -- was what
20 was her role?

21 A She worked for me and was the person directly in charge
22 of our direct stock loan program as well as other bank
23 services.

24 Q She was like a loan officer, right?

25 A Yes.

Sayre - Cross/Egan

92

1 Q And part of her job was to sell these loans, correct?

2 A Not really, no.

3 Q Well, part of her job was she was the contact point for
4 people who were interested in these loans, correct?

5 A Yes.

6 Q And that was because, I mean sell is a poor choice of a
7 word, but I mean you did market these loans, correct?

8 A To a limited degree, yes.

9 MR. EGAN: Yeah, if we could have 18, Page 2 again?

10 Q I mean the whole purpose of 18, Page 2 is to explain this
11 program to potential people who would take out the loans,
12 right?

13 A Yes.

14 Q And that's because banks make -- I mean the way banks
15 make money is by making loans, right?

16 A That's one of the ways they make money, yes.

17 Q And it certainly is one of the ways you made money,
18 right, at your bank, right?

19 A As well as lost it, but yes.

20 Q Well, your job is to make sure that doesn't happen,
21 right?

22 A Yes, sir.

23 Q Okay, in any event, you would agree with me this is a
24 flyer of sorts explaining this to anybody who might be
25 interested in taking advantage of this program, correct?

1 A Anyone who's qualified.

2 Q Well, of course. I mean well, the advertisement is
3 something you might be interested, and then you decide if
4 you're going to do it or not, right?

5 A This program is not, as I've testified to earlier, this
6 program is not available to the general public nor would it be
7 available to anyone who was not a significant shareholder,
8 director or officer of the client bank.

9 Q Understood. And you therefore only would provide this
10 information to other banks basically, right?

11 A Yes.

12 Q Okay, and if you go down to the bottom, we could blow up
13 the very bottom of that.

14 A To -- well, let me clarify my answer -- to other banks,
15 directors of other banks, executive officers of other banks or
16 people affiliated with those banks.

17 Q Sure because they're the people who could conceivably
18 take out one of these loans?

19 A Correct.

20 Q And it says at the bottom please contact Bernadette Kibe,
21 AVP commercial bank and officer and de novo banking
22 specialist, right?

23 A Yes.

24 Q Because she was the point person for these things?

25 A Yes.

Sayre - Cross/Egan

94

1 MR. EGAN: And if we could then go to -- but before
2 we leave this rather than go back and forth, could we go up to
3 the information required section and blow that up?

4 Q In order to apply for one of these loans, whomever was
5 applying needed to provide these things that are listed here,
6 correct?

7 A Some of the -- certainly -- for instance, Number 4 and 5
8 might not be applicable in certain circumstances and certainly
9 there could be other information that was required but yes,
10 those are -- that lists information that generally would be
11 required for such a request.

12 Q Well, so what you're saying is as you go down the road,
13 you might ask for more things but for a start, this is what
14 you're saying you need, right?

15 A Correct, with a clarification that, for instance, if
16 someone already owned the shares, they would -- there would
17 not be a stock subscription and there wouldn't be an offering
18 circular so those would not be applicable.

19 Q Understood. And Number 3 says borrowers and co-borrowers
20 (if applicable), current (within six months) signed personal
21 financial statement, correct?

22 A Yes.

23 Q And so one of the things you wanted was the borrower's
24 financial statement within six months?

25 A Yes.

1 Q Now, while we're on that subject, the borrower is not
2 Nova Bank, right?

3 A Correct.

4 Q The borrower is George Levin?

5 A Correct.

6 Q So the applicant is not Nova Bank, right?

7 A Correct.

8 Q The applicant is George Levin?

9 A Correct.

10 MR. EGAN: All right now, if we could go to
11 Government 67 please?

12 Q And essentially the first page of this is kind of I guess
13 what you'd call the application, right? I mean it has to have
14 a lot of documents with it but this is sort of your form to,
15 you know, have somebody sign and say this is all true and
16 correct, right?

17 A The latter portion of your statement I would concur with.
18 This is what it says. It's an addendum to the personal
19 financial statement that indicates that part of the purpose is
20 to indicate whether they're applying for individual credit or
21 joint credit. So in Mr. Levin's case would he be the borrower
22 himself or potentially he and his wife would be the borrower.

23 Q Right.

24 A So that's part of the purpose. It also provides the
25 ability for the bank to pull credit and covers things from a

1 regulatory perspective but it's an addendum to the personal
2 financial statement.

3 Q Right, and it's signed by Mr. Levin, correct?

4 A Yes.

5 Q And it's dated June 30th, correct?

6 A I can't read whether that's a 20 or a 30 but yes.

7 Q And so he's certifying that everything in here is true,
8 right?

9 A Yes.

10 Q And what's attached to it at Page 2 is his financial
11 statement, correct?

12 A Yes.

13 MR. EGAN: Okay now, if we could go to the last page
14 of this exhibit.

15 Q And you've looked at this before, sir. That is a letter
16 from Nova Bank to Bernadette Kibe, correct?

17 A Correct.

18 Q And it would have gone to Bernadette Kibe because she's
19 the person who Nova Bank would have known to deal with because
20 she's the one who's on the thing they were provided, right?

21 A Well, there's a simpler answer to that. It's who it's
22 addressed to.

23 Q Sure. And it's signed by Tom Patterson, you see that?

24 A Yes.

25 MR. EGAN: And if we could just go down a tiny bit

Sayre - Cross/Egan

97

1 more?

2 Q He is a senior vice president at Nova Bank, correct?

3 A That's what it says.

4 Q All right, and so he's the one who's providing all of
5 this information, right?

6 A That's who signed the letter.

7 Q Okay, and one of the things he's sending is the personal
8 financial statement for George and Gayla Sue Levin, correct?

9 A That's what the letter says. We received a personal
10 financial statement for George and Gayla Levin.

11 Q Right, it's the thing we just looked at, right?

12 A That is correct.

13 Q Okay, and it's from March of 2009, correct?

14 A That is the date of it.

15 Q And that is within six months of the application just
16 like you guys required, right?

17 A That is within the six-month parameter that's outlined in
18 the summary of the stock loan program.

19 Q And correct me if I'm wrong, but you couldn't put a loan
20 that you took out in June on a March financial statement,
21 could you?

22 A Could you repeat the question please?

23 Q Sure. Mr. Levin took out a loan from Nova Bank in June
24 of 2009. That would not be on his March 2009 financial
25 statement, correct?

Sayre - Cross/Engle

98

1 A Correct.

2 Q Now, you never met Brian Hartline, did you?

3 A Yes, I have met him.

4 Q All right, and when was that?

5 A I could not recall the specific date but I -- he's
6 familiar. He's sitting over there. I know who he is.

7 Q Is he the guy with the blue tie on?

8 A The -- no, that's not Mr. -- no, he's the man in the
9 purple tie.

10 Q That guy there?

11 A Yes.

12 Q Okay, did you ever meet Tom Patterson?

13 A No.

14 Q Now, you --

15 A Not that I recall.

16 Q Okay, you would agree with me that it's been a long time
17 since 2009?

18 A Yes.

19 Q And your conversations with Mr. Hartline in regard to
20 this loan were fairly brief?

21 A Yes.

22 Q And they were on the phone?

23 A Yes.

24 Q Any possibility you have him confused with Mr. Patterson
25 and those conversations took place with Mr. Patterson?

Sayre - Cross/Engle

99

1 A No.

2 MR. EGAN: No further questions, Your Honor.

3 MR. ENGLE: May I cross examine?

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION

6 BY MR. ENGLE:

7 Q Good afternoon, Mr. Sayre.

8 A Good afternoon.

9 Q For the record, I am not Brian Hartline. My name is
10 Michael Engle. I'm an attorney representing Barry Bekkedam,
11 the gentleman seated over there in the blue tie. Have you
12 ever seen him before?

13 A No.

14 Q Ever met Mr. Bekkedam before?

15 A No.

16 MR. ENGLE: Can we call up Government Exhibit 67
17 please and go to the last page please?

18 Q You just went over this letter a couple of moments ago
19 with Mr. Egan. This is the letter from Mr. Patterson to one
20 of your colleagues at the bank, correct?

21 A Could you repeat the question please?

22 A This is a letter to one of your colleagues at ACBB from
23 Mr. Patterson at Nova Bank, correct?

24 A Yes.

25 MR. ENGLE: Okay, can we go back to the full shot of

Sayre - Redirect/Barry

100

1 the letter?

2 Q At the bottom of the letter do you see anywhere that
3 anyone is cc'd or carbon copied on the letter?

4 A No.

5 Q In fact, it does not indicate that a carbon copy would
6 have gone to Mr. Bekkedam, correct?

7 A Correct.

8 Q At no point in time while you were considering whether or
9 not you were going to give this loan to George Levin did Mr.
10 Bekkedam ever call you to try to influence your decision, am I
11 correct about that?

12 A You are correct.

13 Q At no time while you were considering whether or not to
14 give a loan to Mr. Levin you never received an e-mail from Mr.
15 Bekkedam imploring you to give him the loan?

16 A No.

17 Q Mr. Bekkedam at no time during this process ever
18 communicated with you in any way whatsoever to provide you
19 with information in support of this loan application, am I
20 also correct about that?

21 A No, I never spoke with or received any correspondence or
22 had any contact with Barry Bekkedam at all.

23 Q Thank you very much, sir.

24 MR. ENGLE: No further questions, Your Honor.

25 REDIRECT EXAMINATION

Fuir - Direct/Barry

101

1 BY MS. BARRY:

2 Q Mr. Sayre, when you had conversations with Mr. Hartline
3 about the request for the \$9 million George Levin loan, were
4 those conversations on the phone?

5 A Yes, they were.

6 Q Do you have a good memory of what Mr. Hartline looks
7 like?

8 A No.

9 MS. BARRY: No further questions, Your Honor.

10 UNIDENTIFIED ATTORNEY: No recross, Your Honor.

11 MR. ENGLE: Nothing, Your Honor, thank you.

12 THE COURT: Thank you, sir. You may step down.
13 Watch your step please.

14 MS. BARRY: Your Honor, the United States calls
15 Glenn Fuir. May I retrieve the exhibits, Your Honor?

16 THE COURT: Surely.

17 MS. BARRY: Thank you.

18 COURTROOM DEPUTY: Please raise your right hand.

19 GLENN ALLEN FUIR, WITNESS, SWORN

20 COURTROOM DEPUTY: Please be seated. Please state
21 your full name and spell your last name for the record.

22 THE WITNESS: My name is Glenn Allen Fuir, F-u-i-r.

23 MS. BARRY: May I proceed, Your Honor?

24 THE COURT: You may proceed.

25 MS. BARRY: Thank you.

Fuir - Direct/Barry

102

1 DIRECT EXAMINATION

2 BY MS. BARRY:

3 Q Good afternoon, Mr. Fuir. Where do you work, sir?

4 A The Federal Reserve Bank in Philadelphia.

5 Q And how long have you been with the Federal Reserve Bank
6 of Philadelphia?

7 A Eighteen years.

8 Q And what is your position with the Federal Reserve?

9 A I'm a manager in the credit risk management function.

10 Q And is that the same or a different position that you
11 held in 2009?

12 A Different.

13 Q And what was your position in 2009?

14 A I was a manager over the exam function for safety and
15 soundness and trust examiners.

16 Q And are you familiar with Nova Financial Holding?

17 A Yes.

18 Q And as part of the position you were in in 2009 did that
19 include inspecting or reviewing financial institutions under
20 the -- that regulated certain financial institutions?

21 A For bank holding companies, yes.

22 Q So is Nova Financial Holding Company an institution that
23 was regulated by the Federal Reserve?

24 A Yes.

25 Q Now, was Nova Financial Holdings Company a parent or the

Fuir - Direct/Barry

103

1 parent to Nova Bank?

2 A Yes.

3 Q Do you recall whether or not in April of 2009 that you
4 conducted a review of Nova Financial Holdings?

5 A I did.

6 Q And what was -- what's the purpose just generally for a
7 review?

8 A So I think Nova was under the what we call the small
9 shell bank holding company program based on the fact that the
10 size of the consolidated organization was less than a billion
11 dollars in total assets. So for those institutions we would
12 not do a full bank holding company inspection with a team of
13 examiners on site but do a limited review.

14 Q And was the -- what was the purpose of the review?

15 A To assess the parent company, well, I guess you could say
16 the consolidated organization and issue ratings.

17 Q And would that be to assess it with regard to safety and
18 soundness?

19 A Yes.

20 Q And who was your primary contact at Nova Financial?

21 A Mr. Hartline.

22 Q And have you met Mr. Hartline before?

23 A Yes.

24 Q And do you recognize him here today?

25 A I do.

Fuir - Direct/Barry

104

1 Q And can you identify him please?

2 A At the table, middle of the table.

3 MS. BARRY: Okay, Your Honor, let the record reflect
4 that the witness has identified defendant Brian Hartline.

5 THE COURT: The record shall so reflect. You may
6 continue.

7 MS. BARRY: Thank you.

8 Q And was this review on site or off site?

9 A There was a portion that was conducted at the
10 institution.

11 Q Now, prior to going to the institution did you ask for
12 certain things that you wanted to look at while you were
13 conducting your review?

14 A Yes. We typically issue what's known as a first day
15 letter that has a list of items that the examiner will review
16 on site.

17 Q At the time -- and when you did this review, did you meet
18 with defendant Hartline?

19 A I did.

20 Q At the time of your review did you know whether or not
21 Nova had applied for TARP funding?

22 A Yes.

23 Q And who told you that?

24 A Mr. Hartline.

25 Q And what did he say about the TARP funding?

Fuir - Direct/Barry

105

1 A Well, I don't recall the details of the conversation.

2 Q Did he just tell you generally they were expecting to get
3 TARP funding?

4 A They did.

5 MR. EGAN: Objection.

6 THE COURT: Sustained.

7 Q What do you recall, if anything?

8 A That they applied for TARP funding.

9 Q And did their -- and at the time you did the review had
10 there been any kind of approval for TARP funding as far as you
11 knew?

12 A Not at that time.

13 Q Did your review include anything related to TARP funding
14 as far as the safety and soundness of the institution?

15 A I don't understand the question.

16 Q When you did your review, did Mr. Hartline tell you that
17 they were or they had applied for TARP funding?

18 A Yes.

19 Q The fact that they had applied for TARP funding, did that
20 affect your review at all?

21 A No.

22 Q Now, after your review, what was -- actually, what was
23 the result of your review of the holding company?

24 A So following the inspection of the holding company, we
25 generate a brief letter explaining what the ratings were that

Fuir - Direct/Barry

106

1 were issued for that particular supervisory event.

2 Q Okay. So I'm sorry, I was calling it a review. Is it
3 better to -- you use the word inspection?

4 A Inspection.

5 Q Okay, so after your inspection of the holding company,
6 was there -- what action, if anything, was taken?

7 A So like I said, we generated this report that
8 communicated the ratings for the holding company and that was
9 a downgrade from the prior rating.

10 Q Okay, so based on your inspection, the holding company
11 was downgraded?

12 A Yes.

13 Q I'd like you to take a look please at what's been marked
14 as Government's Exhibit 32 and just for the witness please.
15 And looking at Government's Exhibit 32, what is it please?

16 A So this is the letter that we issued to the institution
17 communicating the ratings.

18 Q Okay, and communicating the downgrade?

19 A I don't know if it says specifically in there that it was
20 a downgrade from the prior inspection, but the ratings for
21 this time were certainly highlighted there, the risk
22 management rating of 3 and composite rating of 3.

23 Q And did you know at that time that that was a downgrade
24 of the holding company?

25 A Yes.

Fuir - Direct/Barry

107

1 Q And did you have a hand in reviewing or drafting this
2 letter?

3 A I did, yes.

4 MS. BARRY: Your Honor, the Government moves for the
5 admission of Government's Exhibit 32.

6 UNIDENTIFIED ATTORNEY: No objection.

7 UNIDENTIFIED ATTORNEY: No objection.

8 THE COURT: Admitted.

9 MS. BARRY: May it be published, Your Honor?

10 THE COURT: Yes.

11 Q And what is the date of this letter?

12 A June 10th, 2009.

13 Q And looking at the upper third portion, bank holding
14 company rating system and the ratings there, risk management
15 rating and composite rating are 3, and is that from 1 to 5?

16 A Yeah, the scale is 1 to 5 with the 1 being the strongest
17 rating, the 5 being the weakest.

18 Q Okay, and so the 3 is a downgrade from a 2?

19 A Yes.

20 Q And would you please read the sentence that follows
21 composite rating?

22 A Sure. There is growing supervisory concern about the
23 institution's consolidated financial condition due in part to
24 continual net operating losses and capital levels that are not
25 commensurate with the risk profile of the organization.

Fuir - Direct/Barry

108

1 Q And would you please read the next sentence?

2 A As of March 31st, 2009 the total risk based capital ratio
3 of Nova Bank was revised to 8.82 percent after credit related
4 other than temporary impairments were recognized in the bank's
5 trust preferred securities investments.

6 Q So while -- you're not regulating the bank, correct?

7 A Correct.

8 Q But you do know who regulates the bank?

9 A Yes.

10 Q And what agency regulates the bank?

11 A So the federal regulator would have been the FDIC and the
12 State would have regulated it as well.

13 Q And do you understand what the 8.82 percent meant as far
14 as the bank's capital levels?

15 A Right, so the capital levels are in these different
16 categories based on a prompt corrective action. Designations,
17 well capitalized is the top category and with the total risk
18 based capital ratio dropping below ten percent and that would
19 have put the institution into an adequately capitalized
20 category.

21 Q Now, based on this downgrade and the bank going from well
22 capitalized to adequately capitalized, do you -- were there
23 any, at least from the holding company perspective, were there
24 any restrictions now on the holding company?

25 A Well, one of the factors I think that was relevant at the

Fuir - Direct/Barry

109

1 time is they were looking to become a financial holding
2 company to have an acquisition of I think it was an insurance
3 company so in order to qualify for a financial holding
4 company, you'd have to have institutions under the umbrella of
5 the parent that are all well capitalized and well managed. So
6 not being able to qualify for that financial holding company
7 designation would have negatively impacted their ability to
8 acquire this institution which was in the insurance industry.

9 Q Okay, does the name DVFG sound familiar?

10 A That's the one, yes.

11 Q Now, do you recall after this letter went out with the
12 downgrade of the holding company if you had a conversation
13 with defendant Hartline?

14 A I did, yes.

15 Q And I'd like you to take a look at Government's Exhibit
16 33 please. And when did you have a conversation with Mr.
17 Hartline?

18 A Right, so this would have been on the morning of June
19 12th, 2009.

20 Q And did you memorialize your conversation with Mr.
21 Hartline?

22 A In this e-mail message to my boss, yes.

23 MS. BARRY: Your Honor, the Government moves for the
24 admission of Government's Exhibit 33.

25 MR. EGAN: No objection.

Fuir - Direct/Barry

110

1 MR. ENGLE: No objection.

2 THE COURT: Admitted.

3 MS. BARRY: And may it be published, Your Honor?

4 THE COURT: Yes.

5 Q So based on your conversation with Mr. Hartline, what was
6 your impression of his emotion with relation to the downgrade?

7 A Well, I called to apologize for not having a conversation
8 ahead of the receipt of the communication you just shared so
9 he was not happy that the rating came out to be 3 for those
10 two components we just mentioned.

11 Q Okay, so he was not happy?

12 A Correct.

13 Q And could you please read the first sentence there
14 regarding your conversation?

15 A Yes. This is, again, to Eric, my boss. I spoke with
16 Brian Hartline for 40 minutes this morning and he was most
17 concerned about the impact of the ratings on his TARP
18 application and the DVFG acquisition.

19 Q And why don't you please read that entire first
20 paragraph?

21 A He also commented that management has never been rated
22 below a 2. Brian said he thought our ratings decision was
23 made in a vacuum because we did not consider the pending TARP
24 funds as well as another \$15 million he is arranging with a
25 private investor (possibly in connection with the DVFG

Fuir - Direct/Barry

111

1 acquisition).

2 Q And is this conversation the rest of your e-mail to, and
3 I'm sorry, who is this e-mail to?

4 A So this is Eric Sonnheim would have been my boss at the
5 time.

6 Q And the rest of the conversation, and I know it's
7 memorialized and written there, but are you basically
8 explaining the reasons for the downgrade and Mr. Hartline is
9 arguing his points?

10 A Yes.

11 MR. EGAN: Objection. It's a characterization of
12 what Mr. Hartline is doing.

13 THE COURT: Overruled.

14 Q You may answer.

15 A Yes.

16 Q Now, was there a conversation -- did you have any other
17 conversations with Mr. Hartline after this one on June 12,
18 2009?

19 A No, I did not.

20 Q Do you know if Mr. Hartline provided any kind of response
21 to the June 10, 2009 letter?

22 A Yes, so we would have asked for an official response from
23 the institution.

24 Q And did you see that official response from the
25 institution?

Fuir - Direct/Barry

112

1 A I did.

2 Q And I'd like you to take a look now at it's been marked
3 as Government's Exhibit 61(a).

4 MS. BARRY: With the Court's indulgence, Your Honor,
5 I've put down the wrong exhibit number. Can we try 60? I
6 apologize, I had 61(a). It's 60 please, Your Honor. Thank
7 you.

8 Q If you'd take a look at what's been marked as
9 Government's Exhibit 60 and do you recognize what this is?

10 A Yes, this would have been the response.

11 Q Okay.

12 THE COURT: Could you keep your voice up a little
13 bit, sir?

14 THE WITNESS: A little louder?

15 THE COURT: Yes, sir.

16 THE WITNESS: That's the response.

17 THE COURT: Thank you.

18 MS. BARRY: Your Honor, the Government moves for the
19 admission of Government's Exhibit 60.

20 MR. EGAN: No objection.

21 MR. ENGLE: No objection.

22 THE COURT: Admitted.

23 MS. BARRY: May it be published, Your Honor?

24 THE COURT: Granted.

25 Q Looking at Government's Exhibit 60, what is the date of

Fuir - Direct/Barry

113

1 this letter?

2 A July 15th, 2009.

3 Q Okay, and looking at the first line, is this a letter in
4 response to the Federal Reserve's June 10, 2009 letter and a
5 subsequent meeting on June 24, 2009?

6 A Yes.

7 Q Now if you could please turn to Page 3 of that letter.
8 And would you please read the paragraph that begins as part of
9 Nova's CPP application?

10 A Sure. As part of Nova's CPP application, Nova has been
11 in constant contact with the FDIC and in the latter part of
12 May 2009 provided the FDIC with its asset quality trends and
13 its adjusted capital ratios through March 31st, 2009. On June
14 10th, 2009 Nova was informed that the FDIC's counsel had
15 approved Nova's TARP/ CPP application and was submitting it to
16 the Treasury Department for final approval. Nova would be
17 eligible to receive approximately \$14 million of CPP funds
18 contingent upon Nova raising \$15 million of common equity.
19 This amount of capital would allow Nova to regain its well
20 capitalized status and the TARP funds would allow Nova Bank to
21 continue to support the credit needs of the communities we
22 serve during these difficult times.

23 Q And looking at the end of the letter, who are the
24 signatories to this letter?

25 A I don't know if I can pronounce it, Edward DiMarcantonio

Fuir - Cross/Egan

114

1 who's the chairman and Brian Hartline, president and chief
2 executive officer.

3 MS. BARRY: May we have a moment, Your Honor?

4 THE COURT: Yes.

5 MS. BARRY: No further questions. Thank you.

6 MR. EGAN: May I proceed, Your Honor?

7 THE COURT: You may proceed.

8 CROSS EXAMINATION

9 BY MR. EGAN:

10 Q Good afternoon, sir.

11 A Hello.

12 Q Sir, in 2009 you were I believe you said an examiner was
13 one of your jobs?

14 A I was a manager over a team of examiners, yes.

15 Q You were a manager of a team of examiners. And what you
16 said took place at Nova Bank in March or I guess subsequent to
17 March 30 -- as of March 31st, 2009 was an inspection, correct?

18 A Yes.

19 Q And that inspection involved yourself, correct?

20 A Just me.

21 Q Just you. The physical inspection, actually going out
22 and meeting with the folks at the bank was just you, correct?

23 A That is correct.

24 Q But there was also a team of individuals that assisted
25 back at the office on it or did you do the whole thing

1 yourself?

2 A No, it was me.

3 Q You did the whole thing yourself, okay. But you're not
4 the only, as you testified on direct, agency that inspects
5 Nova Bank, correct?

6 A The bank is -- that's correct, not the bank.

7 Q Right, because we have the holding company which is one
8 entity and that's what you're responsible for, the Federal
9 Reserve Board, right?

10 A Correct.

11 Q And then we have the bank which is what the FDIC is
12 responsible for, correct?

13 A As well as the State Department.

14 Q As well as the State, correct. And so your examination
15 or inspection -- your inspection is separate and apart from
16 the inspections that they also conduct?

17 A Correct.

18 Q And that's routinely done? I assume you do that once a
19 year?

20 A The inspections?

21 Q Yeah.

22 A I think they were on like a two-year cycle.

23 Q Okay, but it was a regularly scheduled inspection?

24 A Correct.

25 Q And before you even go out there, you said you sent what

Fuir - Cross/Egan

116

1 you call a first day letter, right?

2 A That is right.

3 Q And that first day letter asks essentially for the
4 holding company to provide all sorts of information to you,
5 correct?

6 A There was a list of several items, yes.

7 Q Right. The Board of Directors meeting minutes, correct?

8 A Uh-huh.

9 Q Any information packets provided to the Board of
10 Directors, correct?

11 A Yes.

12 Q The corporate organization chart, correct?

13 A Uh-huh.

14 Q The internal audit risk assessment?

15 A Yes.

16 Q The audit plan schedule?

17 A Yes.

18 Q The most recent audit findings?

19 A If it's on the letter. I don't remember.

20 Q It's on the letter. And then also a copy of the most
21 recent strategic plan, capital plan and budget, correct?

22 A Yes.

23 Q So that's a lot of stuff that you have to go look at?

24 A I mean it's several items, yes.

25 Q It was a big -- I mean it's a big and important job,

Fuir - Cross/Egan

117

1 right?

2 A Uh-huh.

3 Q Yes?

4 A Yes.

5 Q And the one the FDIC does is actually even more
6 extensive, right?

7 A Yes, that would be a full examination.

8 Q And the Pennsylvania Department of Banking is even more
9 extensive, correct?

10 A Than what we do, yes.

11 Q Now, you went and did this in March, correct, because
12 your letter is March 24, 2009?

13 A April 1st.

14 Q April 1st. But you didn't write your letter with your
15 downgrade findings until June of 2009, correct?

16 A Correct.

17 Q And that was one of the things that Mr. Hartline was a
18 little bit unhappy about, right?

19 A That I didn't communicate to him before he received the
20 letter.

21 Q Right, and also that maybe the letter had taken a little
22 longer than it typically did?

23 A I don't recall that, no.

24 Q Okay well, we can go to that in a minute. You, sir, you
25 didn't have any role in the TARP process, correct?

Fuir - Cross/Egan

118

1 A I did not.

2 Q And you didn't communicate to the CPP at all?

3 A No.

4 Q You don't have any idea who makes the decisions down
5 there, right?

6 A No, I do not.

7 Q But you did as a result of your inspection downgrade,
8 write a letter and I assume you had to get approval from
9 somebody to actually do the downgrade but --

10 A Yes.

11 Q And that would have been this Mr. Sonnheim is it?

12 A Sonnheim.

13 Q He's the guy you sent the e-mail to --

14 A Right.

15 Q -- your boss?

16 A He would have been my boss.

17 Q So you would have to say to your boss hey, this is what I
18 found, can you take a look at it, is it okay to go, is that
19 part of the process?

20 A Well, it may not be that simple. We talk about it. I
21 have to document all the information accumulated during this
22 review in a set of work papers that he would review.

23 Q Right. All I was trying to establish is that you can't
24 just make the decision yourself. You need his approval?

25 A That's correct.

Fuir - Cross/Egan

119

1 Q Okay, so in June you send a letter and that letter on
2 June 10th basically says that as of March 31st, 2009 the --
3 you have downgraded two of the ratings, the risk management
4 rating and the composite rating, correct?

5 A Yes.

6 Q And basically that's -- even though it's as of March
7 31st, it would be reported as of March 31st, this is not
8 anything that Nova's been finding out in March. They don't
9 find out til June when you sent the letter?

10 A Right, so we have to pick an as of date --

11 Q Sure.

12 A -- financially.

13 Q Makes sense. And when you downgraded the bank, that
14 caused the Federal Reserve to place a restriction on the
15 ability of Nova to pay dividends, correct?

16 A So we downgraded the holding company, not the bank.

17 Q Right, I'm sorry. I keep getting those confused.

18 A Yeah. And the -- you asked if there were -- the outcome
19 was a restriction on the payment of dividends.

20 Q Correct.

21 A Right, so that would have been an enforcement action that
22 came out of this.

23 Q Okay, and then you're aware that that's what took place
24 as a result of your downgrade, right?

25 A Yes.

Fuir - Cross/Egan

120

1 MR. EGAN: Okay, and if we could go to Government's
2 Exhibit 33 please? And if we could go to the second paragraph
3 from the bottom. Not a major point but -- no, the one that
4 starts with Frank finally, the very next one. Yeah.

5 Q Finally, I explained to Brian that our letter was delayed
6 at the end of my time line because of a heavy workload, right?
7 Does that refresh your recollection that he was a little but
8 upset about how long it took?

9 A No actually it doesn't to be honest.

10 Q Okay. Well, you are saying that it was delayed, right?

11 A Yes.

12 Q And then you say frankly, I think the delay worked to our
13 advantage because of the OTI issue that came to light
14 following Nova's annual audit which was conducted after my
15 visit on April 1st, correct?

16 A Yes, that's what it says.

17 Q And that has to do with the securities issue that you
18 really weren't involved in that investigation or that
19 examination, correct?

20 A No, I was not.

21 Q But you had been told by one of your -- one of the other
22 regulatory agencies about that issue?

23 A Yes. I don't remember how the information came to me but
24 I was aware of it.

25 Q Okay, and that's another factor that would impact your

Fuir - Cross/Egan

121

1 rating of the holding company, correct?

2 A Yes.

3 MR. EGAN: Now, if you could go back to the -- oh,
4 and just to the next paragraph down.

5 Q Brian remains frustrated due to the lack of communication
6 prior to receiving the letter. So it would be normal for you
7 to call up the bank and say hey, you're about to get a letter
8 and that's not good news? Would that be like more typical?

9 A Yes, we would be more proactive in our communication with
10 the institution.

11 Q And you were just real busy so you didn't get a chance to
12 do that?

13 A That's right.

14 Q Okay, and you're sending this to your boss because you
15 basically know he's going to be calling him up and talking to
16 him too?

17 A After my conversation with Brian, I expected Brian to
18 call Eric, yes.

19 Q And that's why you wrote this long explanation, correct?

20 A Yes.

21 MR. EGAN: Now, if you could go to the paragraph
22 that begins during our discussion which is two up?

23 Q The last sentence of that says if I interpreted the
24 statement correctly, then he missed my point. You see that?

25 A I do.

Fuir - Cross/Egan

122

1 Q So your feeling when you hung up the phone with Mr.
2 Hartline was he didn't quite understand what you were trying
3 to communicate to him?

4 A So this is in reference to the parent bank holding
5 company serving as a source of financial strength --

6 Q Right, and you're saying --

7 A -- for the bank subsidiaries.

8 Q And you're basically saying you don't think he quite
9 understood what you're trying to say to him, right?

10 A About the purpose of capital.

11 Q Right.

12 A Yes.

13 Q Okay. Now, this also mentions this DVFG quite a bit,
14 correct?

15 A It's in there, yes.

16 Q And you're familiar with the fact that Nova wanted to
17 take over this insurance company called DVFG?

18 A Yes.

19 Q And they were in the process of trying to do that during
20 2009?

21 A Yes.

22 Q And that would have been an expansion, correct?

23 A I believe it was, yes.

24 Q And you rated Nova as a holding company of 3, correct?

25 A Yes.

Fuir - Cross/Egan

123

1 Q Now, it goes from 1 to 5?

2 A That's the scale.

3 Q So 5 would be an imminent danger of being taken over,
4 correct?

5 A Yes, that's the weakest rating.

6 Q Okay, and 4 would mean a little bit closer to being taken
7 over?

8 A Mm-mm.

9 Q And 3 means not doing fantastic but it doesn't mean
10 they're in any danger of imminent failure, correct?

11 A That's right, less than satisfactory.

12 Q Because if you were going to say they were in imminent
13 danger of failure, you would have put a higher rating on it?

14 A Lower rating.

15 Q Lower rating. Higher number, lower rating.

16 MR. EGAN: Now, if we could go to Government 60?

17 Q And this is a letter that you were shown by Ms. Barry and
18 it is a letter from Nova to the Federal Reserve Bank, correct?

19 A Yes, it is.

20 Q And it went to Mr. Sonnheim. Did you actually receive
21 this back when it was sent or have you just seen it later?

22 A No, I saw it earlier.

23 Q And it's a very long letter, right?

24 A A couple of pages.

25 Q And it has a whole lot of reasons why Nova disagrees with

1 being downgraded, correct?

2 A Yes.

3 Q And among those are that it's provided ample evidence of
4 its ability to serve as a source of financial strength,
5 correct? If you want to go to Page 2 --

6 A I don't recall that specifically.

7 MR. EGAN: Sure, let's go to Page 2 of 3.

8 Q And if we start the Paragraph finally, it's finally Nova
9 Bank believes that it has provided ample evidence of ability
10 to serve as a source of financial strength to Nova Bank via
11 its ability to raise capital over the years, right?

12 A Yes.

13 Q And during the examiner's visitation Nova communicated it
14 had just begun a capital raise with an offering document dated
15 March of 2009, correct?

16 A Yes.

17 Q And then it talks about all the times that they had
18 raised capital over the years, correct?

19 A Yes.

20 Q And that was all true, right?

21 A It was.

22 Q They had raised capital on all those occasions?

23 A Yes.

24 Q Unfortunately, the last thing they did with the capital
25 the year before was buy Pennsylvania Business Bank, correct?

1 A Right, so they -- I think that acquisition was financed
2 by the reissue of trust preferred securities that had been
3 previously retired.

4 Q Right, and buying Pennsylvania Business Bank was one of
5 the things that had a major impact on their balance sheet,
6 wasn't it?

7 A It increased the size of the organization, yes.

8 Q Okay now, going to the last page that you were shown by
9 Ms. Barry, as part of Nova's CPP application paragraph, in the
10 part that you were asked to read on June 10th, 2009 Nova was
11 informed that FDIC's counsel had approved Nova's TARP/ CPP
12 application, right?

13 A Mm-mm.

14 Q And was submitting it to the Treasury Department for
15 final approval, correct?

16 A Yes, that's what it says.

17 Q So at this point there is no approval, correct?

18 MS. BARRY: Objection.

19 THE COURT: Sustained.

20 Q It says submitting it to the Treasury Department for
21 final approval, correct?

22 A Yes.

23 Q And then it goes on to say Nova would be eligible to
24 receive approximately 14 million of CPP funds contingent upon
25 Nova raising 15 million of common equity, correct?

1 A Correct.

2 Q And it then says this amount of capital would allow Nova
3 to regain its well capitalized status, correct?

4 A Yes.

5 Q So what they're telling you, Mr. DiMarcantonio and Mr.
6 Hartline, is that if they get the 14 million plus the 15
7 million, they will be well capitalized, correct?

8 MS. BARRY: Objection.

9 THE COURT: Sustained.

10 Q This amount of capital in the sentence below 14 and 15
11 million, that refers to the sentence before, does it not?

12 A Yes.

13 MS. BARRY: Objection.

14 THE COURT: Counsel, okay, could I see you please?

15 (At Sidebar)

16 THE COURT: What's the nature of the objection?

17 MS. BARRY: Your Honor, it says and. He's saying
18 that this total. That's not what -- regardless, it's not --
19 he can't say what it means.

20 THE COURT: Wait a minute. Go ahead. I'm sorry.

21 MS. BARRY: I'm sorry. If he would clarify and.
22 It's this amount of capital would regain Nova's -- regain its
23 well capitalized status and the TARP funds would allow for
24 Nova capital to increase. So we'd just like to make sure of
25 the clarification.

1 THE COURT: So the solution to the problem would be
2 if you read verbatim, would that be acceptable as opposed to
3 paraphrasing it in a question?

4 MS. BARRY: That's fine, Your Honor, yes.

5 MR. EGAN: And, Your Honor, I'll withdraw it because
6 I was trying to save time by paraphrasing.

7 (Conclusion of Sidebar)

8 THE COURT: All right.

9 Q And then it goes on to say that this amount of capital
10 would allow Nova to regain its well capitalized status and the
11 TARP funds would allow Nova Bank to continue to support the
12 credit needs of the communities we serve during these
13 difficult times, correct?

14 A Yes, it does.

15 Q So what they're basically saying to you is if all of this
16 happens, we'll able to continue to serve the community,
17 correct?

18 A Yes.

19 Q And Mr. DiMarcantonio, he is chairman -- he's the
20 chairman of the board of Nova Financial Holdings, correct?

21 A I believe so.

22 Q And the president would report to the chairman of the
23 board, correct?

24 A Yes.

25 MR. EGAN: I believe that's all I have, Your Honor.

Fuir - Cross/Shealy

128

1 MS. SHEALY: Can I just briefly?

2 CROSS EXAMINATION

3 BY MS. SHEALY:

4 Q Good afternoon, Mr. Fuir. I'm Allison Shealy.

5 A Hello.

6 Q I represent Barry Bekkedam, the tall gentleman in the
7 blue tie over there.

8 A Uh-huh.

9 Q (Coughing) Excuse me. During your direct examination I
10 believe you characterized your review of the Nova Financial
11 Holdings Company as a limited review or a limited inspection,
12 is that correct?

13 A Yes.

14 Q And it's limited based on the size and type of holding
15 company that Nova was, right?

16 A Right. We call it a small shell.

17 Q Okay, and Mr. Egan, he identified a number of items that
18 you asked for as part of your first day letter, is that
19 correct?

20 A Yes.

21 Q And you were provided all of those items, weren't you?

22 A Yes.

23 Q You were given access to anyone that you wanted to talk
24 to at the holding company or even at the bank, is that right?

25 A That's correct.

Fuir - Cross/Shealy

129

1 Q And during all of that information you never spoke to my
2 client, Barry Bekkedam, did you?

3 A I did not.

4 Q You never communicated with Mr. Bekkedam in any way, via
5 e-mail, telephone, in person, did you?

6 A No.

7 Q In fact, you never met or saw Mr. Bekkedam before today,
8 is that right?

9 A That is correct.

10 MS. SHEALY: No further questions, Your Honor.

11 MS. BARRY: No questions. No redirect.

12 THE COURT: All right. Sir, you may step down.

13 Thank you.

14 THE WITNESS: Thank you.

15 MS. BARRY: Your Honor, the United States calls
16 Jeffrey Hanuscin.

17 THE COURT: Ladies and gentlemen, I have to share
18 with you that I've been doing this, like I said, about 30
19 years now and I was in the state court for 21 years before
20 coming here. I recall both as an attorney and as a judge for
21 that 21 period of time no one ever had anything to drink in
22 the jury box. And I look out today and everyone has to be
23 hydrated and it's an important thing to do but I just thought
24 you might appreciate the fact that history has changed
25 dramatically.

Hanuscin - Direct/Barry

130

1 COURTROOM DEPUTY: Please raise your right hand.

2 JEFFREY THOMAS HANUSCIN, WITNESS, SWORN

3 COURTROOM DEPUTY: Please be seated. Please state
4 your full name and spell your last name for the record.

5 THE WITNESS: Jeffrey Thomas Hanuscin,
6 H-a-n-u-s-c-i-n.

7 MS. BARRY: May I proceed, Your Honor?

8 THE COURT: You may proceed.

9 MS. BARRY: Thank you.

10 DIRECT EXAMINATION

11 BY MS. BARRY:

12 Q Good afternoon, Mr. Hanuscin. Mr. Hanuscin, where do you
13 work?

14 A Currently I work with Prudential Savings Bank.

15 Q And what's your position there?

16 A Vice president/comptroller.

17 Q And prior to Prudential where did you work?

18 A Nova Bank.

19 Q What's the time frame that you worked for Nova?

20 A April 2008 to October 2011.

21 Q And what was your position at Nova Bank?

22 A Senior vice president/chief financial officer.

23 Q So CFO?

24 A Yes.

25 Q And at Nova Bank who did you report to?

Hanuscin - Direct/Barry

131

1 A Brian Hartline.

2 Q And who was Brian Hartline? What was his position?

3 A He was the chief executive officer/president.

4 Q And do you see Brian Hartline here today?

5 A Yes, I do.

6 Q And would you point him out to us please?

7 A He's at the table there next -- in the middle.

8 MS. BARRY: Okay, Your Honor, the Government
9 requests that the record reflect that the witness has
10 identified defendant, Brian Hartline.

11 THE COURT: The record shall so reflect.

12 Q Now, while you were at Nova Bank do you recall if the
13 bank applied for TARP funding?

14 A Yes, they did.

15 Q And how do you know that?

16 A I filled out the application.

17 Q Okay, and do you recall whether or not you had seen the
18 program? Were you the first one to see the program?

19 A I'm not sure what you're asking. Were we aware of the
20 program?

21 Q Yes, how did you become aware of the program?

22 A It was publicized.

23 Q Okay. And who brought it to Nova Bank's attention that
24 there was this TARP funding?

25 A I believe I did.

Hanuscin - Direct/Barry

132

1 Q And I'd like to show you what's been moved into evidence
2 as Government's Exhibit 6.

3 MS. BARRY: And if we may publish that?

4 THE COURT: Granted.

5 Q And looking at Government's Exhibit 6, do you recognize
6 what this is?

7 A Yes, I do.

8 Q And what is that?

9 A It's the TARP application.

10 Q And you indicated -- well, who filled this TARP
11 application out?

12 A I did.

13 Q Okay, and did you fill the TARP application out following
14 any instructions that were given from Treasury on how to fill
15 it out?

16 A No. We were just sent an informational package that
17 provided us this application and what to fill out.

18 Q Okay, so were there instructions and you followed them?

19 A Yes.

20 Q Now I'd like to show you what's been marked as
21 Government's Exhibit 6(a) and just for the witness please.
22 And looking at Government's Exhibit 6(a), what is this?

23 A It's an e-mail sent by myself to Mr. William Gaunt
24 (phonetic).

25 Q Okay, and who is William Gaunt?

Hanuscin - Direct/Barry

133

1 A I believe he was with the Pennsylvania Department of
2 Banking.

3 Q Okay, was he -- why did you send it to William Gaunt?

4 A I don't recall.

5 Q Okay. Did you advise him about anything in your e-mail?

6 A I attached a copy of the application that was sent to the
7 FDIC.

8 MS. BARRY: Okay, the Government moves for the
9 admission of Government's Exhibit 6(a).

10 MR. EGAN: No objection.

11 MR. ENGLE: No objection.

12 THE COURT: Granted.

13 MS. BARRY: And may it be published?

14 THE COURT: Yes.

15 Q And looking at Government's Exhibit 6(a), that -- who is
16 the e-mail from?

17 A Myself.

18 Q And when was this e-mail sent?

19 A October 27, 2008.

20 Q Okay, and is that the same day that you filled out the
21 application for TARP?

22 A I don't recall the exact date of the TARP application.

23 MS. BARRY: May I approach, Your Honor?

24 THE COURT: Yes.

25 MS. BARRY: I've provided the witness with a copy of

1 Government's Exhibit 6.

2 Q Just -- does it refresh -- does it have a date on there?

3 A Yes, it does.

4 Q And is it the same date as what is on this e-mail?

5 A Yes, it is.

6 Q And what is that date?

7 A October 27, 2008.

8 Q Okay, and what do you write? And if you could just read
9 it -- read the first two lines.

10 A Okay, attached is a copy of the TARP application I sent
11 to Lisa Coke (phonetic) of the FDIC. If you should have any
12 further questions, please do not hesitate to contact me.

13 Q Okay, so at this point the FDIC and Lisa Coke -- who is
14 Lisa Coke?

15 A She was our field rep, representative.

16 Q And was -- who was your point of contact at the FDIC with
17 regard to any information on the TARP application?

18 A Lisa Coke.

19 Q And were -- and you sent the TARP application to William
20 Gaunt. Is he another regulator? Is that why you sent it?

21 A Yes.

22 Q Did you provide Ms. Coke with any information that was
23 needed on the TARP application?

24 A No, I just filled out the application.

25 Q I'm sorry, regarding the TARP funding, if there was any

Hanuscin - Direct/Barry

135

1 information that was needed from -- well, let me rephrase
2 this. Once the TARP application was submitted, at some point
3 in time did you have conversations with Ms. Coke about
4 additional information that was needed in order to fund your
5 TARP request?

6 A Yes. This was the original start of the process and then
7 the process continued over time.

8 Q Okay, and when Ms. Coke asked you for information, what
9 was your understanding on who was requesting the information?

10 A I believe the FDIC was requesting the information.

11 Q Okay, and was it Ms. Coke herself or did you have an
12 understanding it was FDIC in Washington who was dealing with
13 the funding?

14 A My --

15 MR. EGAN: Objection, leading.

16 THE WITNESS: I'm sorry. My understanding is I
17 working through --

18 THE COURT: Just a moment please, sir. There was an
19 objection to leading?

20 MS. BARRY: Yes, Your Honor.

21 THE COURT: Rephrase please.

22 MS. BARRY: Yes, Your Honor.

23 Q When Ms. Coke asked for information about the TARP
24 funding, what was your understanding on who other than Ms.
25 Coke was asking for the information?

Hanuscin - Direct/Barry

136

1 A The FDIC would handle the application process. I worked
2 through Ms. Coke to provide information.

3 Q Did Ms. Coke ever tell you that other people wanted this
4 information?

5 MR. EGAN: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: I don't believe she mentioned anybody
8 specific but she did -- made it known that the FDIC, whoever
9 the aboves were, were reviewing and handling the application.

10 Q Okay, so the aboves, when you say the --

11 A Her superiors.

12 Q Okay. And I'd like to show you what's been marked as
13 Government's Exhibit 17 and I'm not sure that this has been
14 admitted into evidence yet.

15 MS. BARRY: It has? Okay. May it be published,
16 Your Honor?

17 THE COURT: Yes.

18 Q Looking at Government's Exhibit 17, what is Government's
19 Exhibit 17?

20 A This is a memo prepared by myself to Ms. Coke of the
21 FDIC.

22 Q Okay, and what does the re line say?

23 A Response to information requested for TARP application.

24 Q Okay, so if Ms. Coke asked for information, you provided
25 it?

Hanuscin - Direct/Barry

137

1 A Yes.

2 Q Okay, and so looking at Government's Exhibit 17, you were
3 responding to various requests on information, correct?

4 A Yes.

5 Q Okay. Now --

6 MS. BARRY: And we can take Government's Exhibit 17
7 down.

8 Q Mr. Hanuscin, while Nova's TARP application was being
9 considered, what happened to Nova's capital levels around May
10 or June of 2009?

11 A We were informed that a treatment of certain investments
12 was going to be changed and the impact was that we were going
13 to reduce our risk base capital rating to below well
14 capitalized.

15 Q Did you have any discussions with Brian Hartline about
16 how the change in your capital levels would affect the TARP
17 application?

18 A Yes.

19 Q And what did you talk about with Mr. Hartline?

20 A Well, the criteria to be approved for TARP required that
21 the institution be classified as well capitalized.

22 Q Okay, so if it was no longer well capitalized and
23 adequately capitalized, do you know whether that would have an
24 effect on the application?

25 A Yes.

Hanuscin - Direct/Barry

138

1 Q At the time that you learned that the capital levels for
2 Nova were being changed from well capitalized to adequately
3 capitalized, was Nova Bank in a capital raise?

4 A Specifically to that day, no, but we were involved in a
5 number of capital raises during my tenure there.

6 Q Okay, and what is a capital raise?

7 A We were a privately held company so we would solicit
8 ownership privately, not go through normal terms because the
9 SEC publicly traded. We would put together a private offer
10 and document and submit it to investors and try to raise the
11 capital that way.

12 Q Now, based on the capital levels changing for Nova Bank,
13 did you have to amend the call reports in any way?

14 A Yes, we did.

15 Q Okay, and what call report had to be amended?

16 A I do recall March of that year call report but I don't
17 remember if I had to go back to December.

18 Q Okay, and when you say March call report, what would be
19 the day? Is it the end of the second quarter?

20 A March 31st would be the end of the first quarter --

21 Q I'm sorry.

22 A -- calendar quarter.

23 Q Okay, and so that's March 31st, 2009?

24 A Yes.

25 Q Now I'd like to show you, and I believe it's been moved

Hanuscin - Direct/Barry

139

1 into evidence, Government's Exhibit 28.

2 MS. BARRY: And may it be published, Your Honor?

3 THE COURT: Yes.

4 Q Looking at Government's --

5 MS. BARRY: Oh, thank you. And if it could be
6 published please?

7 Q Looking at Government's Exhibit 28, what is this
8 document?

9 A This is a memo to Ms. Coke from myself.

10 Q Okay, and what is the re line?

11 A TARP application.

12 Q Okay, and so looking at the first paragraph, can you read
13 that please?

14 A Sure. Per your request, we have analyzed our investment
15 portfolio as of March 31st, 2009 for direct credit substitutes
16 for, excuse me, for investments not eligible for the risk
17 rating base approach item one. Based on the results, it
18 appears that Nova has understated its March 2009 risk rated
19 assets by 15.4 million, therefore, reducing risk weighted
20 capital to 8.82 percent from 10.24 percent as reported on the
21 call report.

22 Q And so that is where the capital levels have changed from
23 10.24 percent which was well capitalized and now it's 8.82
24 percent to being adequately capitalized?

25 A Yes.

Hanuscin - Direct/Barry

140

1 Q Is that what that letter said?

2 A Yes.

3 Q Is that what it says? Okay. And can you read the next
4 sentence please?

5 A (Coughing) Excuse me. Management believes that adequate
6 capital levels should be short lived with the anticipated
7 private capital raise projected to close prior to June 30th,
8 2009. Currently an individual has expressed interest to
9 invest \$15 million in Nova Financial Holdings.

10 Q Okay.

11 A The -- that's it?

12 Q Thank you. Now, regarding an individual that has
13 expressed interest to invest \$15 million in Nova Financial
14 Holdings, did you have any conversations with Brian Hartline
15 on who this individual was?

16 A Yeah. He disclosed the gentleman.

17 Q Okay, and in fact do you -- who was that person?

18 A George Levin.

19 Q And where did -- do you know how George Levin came to be
20 an investor with or a potential investor with Nova Bank at
21 this point in time?

22 A I believe he was referred to by Barry Bekkedam.

23 Q Okay, and who is Barry Bekkedam?

24 A He -- at the time I was employed he was a consultant with
25 the bank.

Hanuscin - Direct/Barry

141

1 Q And did Mr. Bekkedam have a company or an investment
2 firm?

3 A Yes, he did.

4 Q And what was that investment firm called?

5 A Ballamor Capital.

6 Q And as a consultant, what was defendant Bekkedam's role
7 as a consultant with Nova Bank?

8 A I believe he aided Mr. Hartline with his capital raises.

9 Q Now, when you -- attached to this memo there are several
10 different attachments --

11 MS. BARRY: And, Your Honor, if I may provide the
12 witness with this hard copy so -- or a hard copy of
13 Government's Exhibit 28 so that he can look through it?

14 THE COURT: Surely.

15 MS. BARRY: May I approach, Your Honor?

16 THE COURT: Yes.

17 Q With this memo did you provide several attachments to
18 that memo?

19 A Yes.

20 Q And I'd like you to turn to the first attachment please.

21 MS. BARRY: And if we may publish that please?

22 THE WITNESS: I'm sorry?

23 MS. BARRY: I'm just asking if we can publish that.

24 THE COURT: Yes.

25 MS. BARRY: Thank you.

Hanuscin - Direct/Barry

142

1 Q All right, looking at the second page, what is -- what
2 are we looking at here, the second page of Government's
3 Exhibit 28?

4 A It's a letter from Barry Bekkedam to Brian Hartline.

5 Q And would you please read the first sentence?

6 A I would like to confirm that one or more investor clients
7 of Ballamor Capital, Inc., are prepared to invest \$15 million
8 in Nova Financial, Inc., initially and to broaden that
9 investment up to \$40 million in 2009.

10 MS. BARRY: And if could just -- if we could make
11 the letter larger -- see the whole letter please?

12 Q And what's the date of this letter?

13 A June 2nd, 2009.

14 Q Okay, and so is it the same date as your memo?

15 A Yes.

16 Q Okay, and do you recall receiving this letter from
17 defendant Bekkedam?

18 A Me personally I didn't receive it. It was sent to Brian.
19 He forwarded me a copy to attach.

20 Q And so this letter is something that you sent to Lisa
21 Coke regarding your TARP application?

22 A Yes.

23 Q And your conversations with Mr. Hartline about the fact
24 that Nova Bank was only adequately capitalized, did you have
25 any conversations about how to get back to well capitalized in

Hanuscin - Direct/Barry

143

1 order to get the TARP funds? How were you going to do that?

2 A Brian and myself had a number of conversations on how the
3 bank needed to get back to well capitalized --

4 Q Okay.

5 A -- not just one specific thing.

6 Q Okay well, in this memo to Lisa Coke when you provide the
7 information on a \$15 million investor or investors from
8 Ballamor Capital Management, was that based on some of your
9 discussions or consistent with your discussions with Mr.
10 Hartline?

11 A Yes.

12 Q Were you involved with any discussions that defendant
13 Hartline had with defendant Bekkedam on this \$15 million
14 potential investor?

15 A No, I wasn't.

16 Q Now, do you know whether there was a contingent approval
17 on the TARP funds in and around June 10th of 2009?

18 A Yes.

19 Q And what was your understanding?

20 A We had conditional approval if we raised an additional
21 \$15 million.

22 Q And who told you that?

23 A I believe we were informed by the FDIC.

24 Q And do you recall a loan to an individual named George
25 Levin?

Hanuscin - Direct/Barry

144

1 A Yes.

2 Q And again, when you heard the name George Levin, was that
3 also an investor that defendant Hartline told you about?

4 A I'm not sure of the timing. I was told eventually that
5 we were going to apply with the Federal Reserve Bank that Mr.
6 Levin would be considered or applied for to be an investor.

7 Q Okay. Now, this loan for Mr. Levin --

8 MS. BARRY: And if we could please show the witness
9 Government's Exhibit 43?

10 Q And what's Government's Exhibit 43?

11 A This is a loan request writeup. We call it a risk
12 assessment summary.

13 Q And who's the borrower?

14 A George G. Levin.

15 Q And what's the amount?

16 A \$5 million.

17 Q And if we go to the last page, is your signature --

18 MS. BARRY: And if we could publish this please,
19 this last page?

20 THE WITNESS: Yes, that's my signature.

21 Q Were you told what the purpose of this loan was for?

22 A My recollection of the loan was that the proceeds were
23 used to renovate a house that he had on the main line and that
24 he was going to use some other funds for investment purposes.

25 Q Okay, so --

Hanuscin - Direct/Barry

145

1 A But the majority of it was for renovation.

2 MS. BARRY: Okay, so if we could please look at the
3 first page of the raz (phonetic) and if we go to purpose of
4 the loan?

5 Q And what does it say here on purpose of the loan?

6 A Financial investment.

7 MS. BARRY: Okay, and if we go to the second page
8 and go to the transaction comments?

9 Q What does it say there, Mr. Hanuscin?

10 A Mr. George Levin borrows, requests in a \$5 million non-
11 revolving commercial line of credit from Nova Bank. The loan
12 will be used by Mr. Levin for investment purposes.

13 Q Okay.

14 A The loan will be a 12-month line of credit. The payments
15 will be interest only with a rate of prime plus one with a
16 floor of seven percent. The loan will be unsecured but will
17 have the corporate guarantee of all Banyan Group of companies
18 as shown above.

19 Q Okay now, and I failed to ask you this, as CFO what
20 committees did you sit on?

21 A I sat on the loan committee and the Alco (phonetic)
22 committee.

23 Q So as a member of the loan committee, was part of your
24 duties obviously to approve loans?

25 A Yes.

Hanuscin - Direct/Barry

146

1 Q Okay, and was this Levin \$5 million unsecured loan
2 approved?

3 A Yes.

4 Q And were you ever told that this \$5 million loan was
5 going to be used to purchase Nova stock?

6 A No.

7 Q And would that be important for you to know?

8 A At the time if the loan was originated if its stated
9 purpose that it was used for -- used to purchase stock, we
10 would have to look at it for accounting purposes treatment.

11 Q So you would have to have done something knowing that it
12 was being used to purchase stock?

13 A Yeah, we would have to review the transaction to make
14 sure that it qualifies.

15 Q Now at some point in time do you know that whether or not
16 Mr. Levin actually makes a \$5 million investment to purchase
17 Nova stock?

18 A Yes.

19 Q Okay. And at the time did you put the loan and the
20 investment together at the time you were told that Mr. --

21 A At the time I was told, no. It was brought to my
22 attention from our accounting firm that they were looking at
23 the transactions when I put the two together.

24 Q Okay, and was that at least almost a year later?

25 A Yes.

Hanuscin - Direct/Barry

147

1 Q When -- who told you that Mr. Levin made an investment of
2 \$5 million in Nova stock?

3 A Who told me specifically that he -- I would think Brian
4 would have mentioned it. Brian was responsible for
5 shareholder activity.

6 Q And when you knew that a \$5 million investment had been
7 made, did you add that as CFO to the bank's capital levels?

8 A Yes. Originally we did but, again, the loan was -- the
9 timing of the loan and the contribution or when I determined
10 that the capital was there, it was some time apart.

11 Q Okay, so you didn't put the two together.

12 A I didn't immediately put the two together, no, I did not.

13 Q Sure. And adding that -- at the time with this
14 investment when you added it to the bank's capital levels, did
15 that improve the bank's capital levels?

16 A Yes, it did.

17 Q Now, were you aware that George Levin was going to --

18 A (Coughing) Excuse me.

19 Q -- invest additional monies?

20 A Yes, I was aware of it.

21 Q And do you know whether or not he had to file a change in
22 control application with the Federal Reserve?

23 A Yes, I was aware.

24 Q Now, at some point do you recall -- you mentioned that
25 there was as of June 10th, 2009 you knew there was approval

Hanuscin - Direct/Barry

148

1 with a contingency of \$15 million, correct --

2 A Yes.

3 Q -- for the TARP --

4 A Yeah.

5 Q -- I'm sorry, for the TARP money? Did you receive --
6 well, I'd like to show you what's been marked as Government's
7 Exhibit 75.

8 MS. BARRY: And may it be published? I believe it's
9 been admitted, Your Honor.

10 THE COURT: Any objection?

11 UNIDENTIFIED ATTORNEY: No objection.

12 THE COURT: Granted.

13 Q And what is Government's Exhibit 75?

14 A It's a letter from the Treasury, U.S. Department of
15 Treasury to myself.

16 Q And what is this letter about?

17 A This letter is to inform us that we got conditional
18 approval for TARP with the condition that we raise an
19 additional \$10 million of capital.

20 Q Okay. And is -- have you already raised \$5 million as
21 far as you knew?

22 A Yes.

23 Q Okay. Now, do you -- were you involved with
24 conversations with Mr. Hartline about trying to raise the
25 additional \$10 million of capital?

Hanuscin - Direct/Barry

149

1 A Yeah, I had conversations with him, plus I assisted in
2 the preparation of the private placement offering document.

3 Q And do you know whether or not at this point in August of
4 2009 whether the -- your expectation was that Mr. Levin was
5 going to put in the additional 10 million?

6 A Yes.

7 Q And I'd like to show you what's been marked as
8 Government's Exhibit 116 and just for the witness please. And
9 looking at Government's Exhibit 116, what is Government's
10 Exhibit 116?

11 A It's an e-mail from -- it's an e-mail, original e-mail
12 from David Schwartz (phonetic) to Brian Hartline and myself
13 and Michael Lininger (phonetic).

14 Q And then is there a reply e-mail above it?

15 A Yes, there's a reply from Brian to David copied to
16 myself.

17 MS. BARRY: Your Honor, the Government moves for the
18 admission of Government's Exhibit 116.

19 MR. EGAN: No objection.

20 MR. ENGLE: No objection.

21 THE COURT: Granted.

22 MS. BARRY: And if we could just show that -- the
23 first e-mail in the string from David Schwartz? Oh, I'm
24 sorry, Your Honor, may it be published?

25 THE COURT: Yes.

Hanuscin - Direct/Barry

150

1 MS. BARRY: The first e-mail from David Schwartz in
2 time.

3 THE WITNESS: This one is from Brian.

4 MS. BARRY: The first e-mail from David Schwartz
5 please. Okay, thank you.

6 Q And, Mr. Hanuscin, who is David Schwartz?

7 A He was our counsel that we used for regulatory matters.

8 Q Okay, and what's the date of this e-mail please?

9 A October 26, 2009.

10 Q And again, to whom is this e-mail going?

11 A To Brian M. Hartline and myself.

12 Q And what is the subject?

13 A TARP/CCP.

14 Q And what does Mr. Schwartz write to you and Brian
15 Hartline?

16 A Treasury counsel just called and told me that she had
17 been told by Treasury that you expect to close on the
18 remaining necessary equity (Levin) this Friday. She said that
19 the Treasury had spoken to someone at the bank. That being
20 the case, she moved our tentative closing to the following
21 Friday, November 6. Let me know if any of this is wrong.
22 Thanks, David.

23 Q Okay, so when you're talking -- what did you understand
24 the closing to be?

25 A To receive TARP, you had to go through a closing process

Hanuscin - Direct/Barry

151

1 because equity was going to change hands.

2 Q Okay, so at this point when you're talking about closing
3 and the necessary equity from Levin, is that the \$10 million
4 that you were expecting from Mr. Levin?

5 MR. EGAN: Objection. Leading.

6 THE COURT: Sustained.

7 THE WITNESS: No. My belief is --

8 THE COURT: Just a moment please.

9 THE WITNESS: I'm sorry.

10 Q When -- what did you understand remaining necessity
11 equity (Levin) to mean?

12 A I'm sorry, can you repeat that?

13 Q In the e-mail from David Schwartz what did you understand
14 the remaining necessary equity (Levin) this Friday?

15 A Oh, I'm sorry, yeah, I believe that's the remaining
16 commitment that Mr. Levin made of \$10 million.

17 MS. BARRY: And so if we can go to the e-mail above
18 that --

19 Q What does Mr. Hartline say in response?

20 A We are trying to get five million in this week from
21 George to correspond with the investor list I gave you last
22 week. At this point I'm not sure of the specific date of when
23 the funds will come in but I will keep you informed -- keep
24 everyone informed.

25 Q Was any subsequent investment by Mr. Levin made other

Hanuscin - Direct/Barry

152

1 than the \$5 million in June of 2009?

2 A No.

3 MS. BARRY: Your Honor, I'm going onto another area.
4 I don't know if you'd like me to continue. I'm happy to do
5 that.

6 THE COURT: No. We're going to adjourn.

7 MS. BARRY: Okay, thank you.

8 THE COURT: All right, ladies and gentlemen, we're
9 going to adjourn for the day. Again, do not discuss the
10 testimony nor conduct any kind of investigation or research on
11 your own. We'll see you tomorrow morning at 9:15. Thank you.

12 COURTROOM DEPUTY: All rise.

13 (Jury out)

14 THE COURT: You may step down, sir. We're
15 adjourned.

16 MR. IGNALL: Well, Your Honor, may I raise one thing
17 on the record?

18 THE COURT: Yes, sir.

19 MR. IGNALL: Mr. Egan raised a concern with respect
20 to a number of exhibits that the Government -- some of which
21 the Government has introduced and some that the Government
22 will introduce because the Government located them on a laptop
23 that was seized from Mr. Hartline during a search back in I
24 think 2012. I looked through them. I've spoken with Mr.
25 Egan. I don't think we need the jury to know that those

1 documents came from Mr. Hartline's laptop.

2 The issue that Mr. Egan raised was that the Bates
3 number range we put on there where it came from, it says
4 Hartline laptop and then a number, I believe we have an
5 agreement with Mr. Egan and with counsel of Mr. Bekkedam.
6 What I'd like to do is I'd like to move these in by
7 stipulation, that they'll agree that they're admissible,
8 therefore, we won't have to bring in anyone to say they came
9 from Mr. Hartline's laptop and as a result, I will ask one of
10 our litigation support people to renumber them so when they
11 get on the screen, they won't say Hartline laptop.

12 MR. ENGLE: That's correct, Your Honor.

13 MR. IGNALL: And if I could just read off the list
14 and make sure we have an agreement, I'd like to move -- some
15 of these may already be in but I'm just going to do them all.
16 It's Exhibit 4, 70, 86, 91, 92, 99, 116, 118, 119, 123, 124,
17 124(a), 163, 167, 171, 191(a), 191(b), 192 and 196.

18 MR. EGAN: That's correct.

19 THE COURT: All right.

20 MR. IGNALL: May they be admitted --

21 UNIDENTIFIED ATTORNEY: Agreed.

22 MR. IGNALL: -- with the stipulation that we will
23 change the Bates number?

24 THE COURT: Yes, sir.

25 MR. EGAN: And can I raise my favorite question?

1 THE COURT: Sure.

2 MR. EGAN: Could we have the lineup?

3 MR. IGNALL: I will send an e-mail this afternoon
4 once I know. I believe Mr. Patterson will be next. We'll
5 have to see who we can get here for tomorrow and I'll let the
6 defense know.

7 MR. EGAN: Thank you.

8 THE COURT: All right, thank you.

9 * * * * *

10 C E R T I F I C A T I O N

11 We, LORI AULETTA and MARY POLITO, the court approved
12 transcribers, certify that the foregoing is a correct
13 transcript from the official electronic sound recording of the
14 proceedings in the above-entitled matter.

15 **Lori Auletta**
16 Digitally signed by Lori Auletta
DN: cn=Lori Auletta, o, ou,
email=dianadoman@comcast.net,
c=US
Date: 2016.04.15 16:23:47 -04'00'

17 LORI AULETTA

18 **Mary Polito**
19 Digitally signed by Mary Polito
DN: cn=Mary Polito, o, ou,
email=dianadoman@comcast.net, c=US
Date: 2016.04.15 16:23:57 -04'00'

20 MARY POLITO

21 DIANA DOMAN TRANSCRIBING, LLC DATE: April 15, 2016

22

23

24

25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 20
- 21
- 22
- 23
- 24
- 25

RECROSS

Jeffrey Hanuscin	3 (Bar)	27 (Ega)	79 (Bar)	83 (Ega)
		67 (Dun)		
Thomas Patterson	89 (Ign)	141 (Ega)	201 (Ign)	
		168 (Eng)		

EVID.

1234

Hanuscin - Direct (Bar)

3

1 (The following was heard in open court at 9:44 a.m.)

2 THE COURT: Good morning.

3 ALL: Good morning, Your Honor.

4 THE COURT: My apologies. I had to deal with the
5 other 250 cases on my docket inventory. Are we ready, or do
6 you need to see me about anything?

7 MR. EGAN: Not to my knowledge, Your Honor.

8 MR. IGNALL: I think we're ready.

9 MS. BARRY: No, Your Honor.

10 (Pause)

11 THE CLERK: All rise.

12 (Jury in at 9:44 a.m.)

13 THE CLERK: Court is now in session. The Honorable
14 C. Darnell Jones, II presiding.

15 THE COURT: Good morning. Good morning. You may be
16 seated.

17 THE JURY: Good morning.

18 THE COURT: You may proceed.

19 MS. BARRY: Thank you, Your Honor.

20 JEFFREY HANUSCIN, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

21 DIRECT EXAMINATION

22 BY MS. BARRY:

23 Q Good morning, Mr. Hanuscin.

24 A Good morning.

25 Q You -- did you communicate with the FDIC in providing

Hanuscin - Direct (Bar)

4

1 information related to the TARP funding?

2 A Yes.

3 Q Do you know whether or not Brian Hartline also provided
4 information to the FDIC regarding TARP funding?

5 A I'm aware that -- that I started the process, and as the
6 process went on, Brian got more involved.

7 Q Okay. So do you know whether or not he was speaking with
8 Lisa Koch?

9 A Yes.

10 Q Okay. Now, do you know an individual named Anthony
11 Bonomo?

12 A I'm familiar with the name.

13 Q Okay. And how are you familiar with that name?

14 A I understand it was a loan customer of ours or a
15 customer.

16 Q Okay. Do you know how he came to the bank or through
17 whom he came to the bank?

18 A No, I do not.

19 Q Okay. Do you know whether or not he was a customer of
20 Ballamor?

21 A No, I do not.

22 MR. ENGLE: Objection to the leading.

23 THE COURT: Sustained.

24 BY MS. BARRY:

25 Q Do you know whether or not a \$4.5 million loan was

Hanuscin - Direct (Bar)

5

1 approved for Mr. Bonomo at the bank?

2 A Yes.

3 Q Okay. And were you ever made aware by Brian Hartline
4 that any part of that \$4.5 million loan would be used to
5 purchase Nova stock?

6 A No.

7 Q Was there a time where Brian Hartline told you that Mr.
8 Bonomo was making a \$2.5 million investment in the bank?

9 A I eventually became aware.

10 Q Okay. And when you learned that information, did you add
11 that \$2.5 million to the bank's capital levels?

12 A I included it into the capital calculation, yes.

13 Q And did that addition of the \$2.5 million improve the
14 bank's capital levels?

15 A Yes.

16 Q And if you had known that the money had come from a loan
17 from Nova Bank, would you have treated it differently?

18 MR. ENGLE: Objection.

19 MR. EGAN: Objection.

20 MR. ENGLE: It calls for speculation.

21 THE COURT: Sustained.

22 BY MS. BARRY:

23 Q Now, do you know an individual named Barry Bekkedam?

24 A I heard of him.

25 Q Okay. And how -- what did you know about him?

Hanuscin - Direct (Bar)

6

1 A I knew he was one of the original founders of Nova bank
2 shares with Brian.

3 Q Okay. And do you know whether or not he was involved
4 with the bank in capital raise?

5 A Yes.

6 Q And I believe you said yesterday that you understood that
7 he maybe had been a consultant, or is that --

8 A I believe he was -- he was under agreement to be a
9 consultant --

10 Q Okay.

11 A -- or engaged to be a consultant.

12 Q Okay. And do you know whether or not Mr. Bekkedam was
13 ever paid by the bank as a consultant?

14 A Yes.

15 Q Okay. And how much was he paid?

16 A I believe it was \$250,000.

17 Q Okay. I'd like to turn your attention, please, to
18 Government's Exhibit 129. In looking at Government's Exhibit
19 129, what is this, sir, please?

20 A This is a printout of a checking account statement that
21 was held in Nova Bank.

22 Q Okay. And I'm going to show you the hard copy --

23 MS. BARRY: If I may approach, Your Honor?

24 THE COURT: Yes.

25 MS. BARRY: Because I --

Hanuscin - Direct (Bar)

7

1 BY MS. BARRY:

2 Q In looking at the hard copy of Government's Exhibit 129,
3 is this -- this is a checking account at Nova Bank?

4 A Correct.

5 Q All right. And whose checking account is it?

6 A I believe that the address stated here is the office of
7 Ballamor Capital or Barry Bekkedam.

8 Q Okay. And I know that it's kind -- it's hard to see at
9 the top, it's a little bit cut off, but -- but what does --
10 does it appear to say Barry Bekkedam -- I mean -- yes.

11 A You can -- you can make -- yes, you can make out that
12 it's Barry Bekkedam.

13 Q All right.

14 MS. BARRY: Your Honor, the Government moves for the
15 admission of Government's Exhibit 129.

16 MR. EGAN: No objection.

17 MR. ENGLE: May we approach?

18 THE COURT: Surely.

19 (Sidebar begins)

20 MR. ENGLE: Your Honor, I don't have any -- I don't
21 have an objection to the admission of the document for the
22 purpose that I believe the Government is using it for, which
23 is to show the deposit of \$250,000. I just wanted to make
24 sure that if we're then going to publish it to the jury, we're
25 not showing them the rest of it because the issue of gambling

Hanuscin - Direct (Bar)

8

1 proceeds --

2 THE COURT: Right.

3 MR. ENGLE: -- you in limed out would come up if
4 they saw the entire document. So if you keep it on the
5 screen, just to the \$250,000 deposit, I don't have a problem
6 with it. But the rest of it shouldn't be admissible.

7 THE COURT: It's not relevant anyway.

8 MR. ENGLE: It's not relevant.

9 MS. BARRY: Well, I'm going to -- may we revisit
10 that, Your Honor?

11 MR. ENGLE: You weren't --

12 MS. BARRY: Not to the gambling. Not to the
13 gambling, no. There's no -- I don't even know what's on there
14 that says -- related to gambling.

15 MR. ENGLE: Why don't we show it to the witness
16 right now.

17 MS. BARRY: No, we'll show that portion. Okay.
18 We'll show that portion.

19 THE COURT: All right. It's only the witness' on my
20 screen.

21 MS. BARRY: Yes.

22 MR. ENGLE: Right.

23 THE COURT: So you just need to tell the jury.

24 MS. BARRY: Yes.

25 THE COURT: Okay.

Hanuscin - Direct (Bar)

9

1 MS. BARRY: Yeah.

2 THE COURT: Well, the only question I have is, is it
3 not possible to simply redact it?

4 MS. BARRY: Oh, the gambling we could.

5 THE COURT: Well, everything -- I mean, there's
6 nothing else --

7 MR. ENGLE: What's the probative value of the rest
8 of it?

9 THE COURT: And the other stuff on there. There's
10 different charges on there. And the only thing he's talked
11 about now is the \$250,000.

12 MS. BARRY: Yes, Your Honor. There is a payment to
13 Mr. Bonomo on there.

14 THE COURT: Okay. But you haven't covered that.

15 MS. BARRY: No, not yet. So I'm fine with just
16 showing him that portion now.

17 THE COURT: All right.

18 MS. BARRY: That's fine.

19 MR. ENGLE: Yeah, what's up on the screen now is
20 what --

21 MS. BARRY: Yeah.

22 MR. ENGLE: -- the issue --

23 THE COURT: Yeah, everything is on the screen now,
24 yeah.

25 MR. ENGLE: Yeah.

Hanuscin - Direct (Bar)

10

1 THE COURT: Thank you.

2 (Sidebar ends)

3 MS. BARRY: Your Honor, the Government moves for the
4 admission of Government's 129.

5 MR. ENGLE: No objection, Your Honor.

6 THE COURT: Admitted.

7 MS. BARRY: Okay. And, Agent Boyer, if you could
8 please just show the top portion of -- please publish just the
9 top portion and down to what is the entry for 11/19, please.
10 And may it be published, Your Honor?

11 MR. EGAN: No objection.

12 MR. ENGLE: No objection.

13 THE COURT: May I see you briefly, please?

14 MR. ENGLE: Yes, Your Honor.

15 (Sidebar begins)

16 THE COURT: Now, let me just get something clear.
17 This is his personal credit card bill or the company's?

18 MS. BARRY: This -- it's under the name Barry
19 Bekkedam. It's a personal bank statement.

20 THE COURT: Okay. And it came through this witness?

21 MS. BARRY: Yes, because he -- he recognized that it
22 was a checking account statement from Nova Bank, because it
23 has a specific routing number that is specific to the bank so
24 it identifies the bank.

25 THE COURT: And on the other side of that line is

Hanuscin - Direct (Bar)

11

1 \$316,000. That's not in issue?

2 MS. BARRY: No.

3 MS. SHEALY: That could be redacted also.

4 MR. ENGLE: We would prefer it was redacted.

5 MR. IGNALL: I think we can (inaudible). I think we
6 can do it.

7 MS. BARRY: Okay.

8 (Sidebar ends)

9 MS. BARRY: Your Honor, we're looking at the screen
10 now.

11 THE COURT: All right.

12 MS. BARRY: May this be published to the jury?

13 THE COURT: Any objection?

14 MR. ENGLE: No objection, Your Honor.

15 MR. EGAN: No, Your Honor.

16 THE COURT: Yes.

17 MS. BARRY: And may it be published to the jury now?

18 THE COURT: Yes.

19 BY MS. BARRY:

20 Q Now, I know the -- the top portion on the screen is
21 redacted because I believe there was a specific address, but
22 whose account is this at Nova Bank, please?

23 MR. ENGLE: Your Honor, we'll stipulate that it's
24 Mr. Bekkedam's account.

25 THE COURT: All right.

Hanuscin - Direct (Bar)

12

1 BY MS. BARRY:

2 Q And looking at Government's Exhibit 129, is that the
3 consulting fee that's from Nova Bank?

4 A Yes.

5 Q Okay. And what is the date of that?

6 A November 19th.

7 Q Okay. And is that 2009?

8 A I'm looking for it on the statement. Yes.

9 Q Okay. Now, was there -- did Nova Bank meet the
10 contingency requirement for the TARP funding in October of
11 2009?

12 A I believe we had to raise 15 -- or an additional \$10
13 million. As of October '09, I don't believe we completed the
14 \$10 million. We raised some money towards it, but not
15 sufficient; not the 10 million.

16 Q Okay. As of November of 2009, had Nova Bank raised the
17 full amount of the contingency?

18 A No, not as of November.

19 Q Okay. Now, going into December of 2009, do you know
20 whether or not there were communications between Brian
21 Hartline and Lisa Koch regarding the contingency?

22 A I don't personally know if there was any specific
23 communications, but I'm sure there was.

24 MR. ENGLE: Objection.

25 THE COURT: Sustained.

Hanuscin - Direct (Bar)

13

1 BY MS. BARRY:

2 Q Let's take a look at what's been admitted, I believe, as
3 Government's Exhibit 140.

4 MS. BARRY: And if we could please publish that to
5 the jury, Your Honor.

6 THE COURT: To the jury?

7 MS. BARRY: Yes --

8 THE COURT: To the jury?

9 MS. BARRY: Yes, Your Honor.

10 THE COURT: Yes.

11 MS. BARRY: Okay.

12 BY MS. BARRY:

13 Q And so looking at Government's Exhibit 140, who is this
14 an email from?

15 A Brian Hartline.

16 Q And who is it to?

17 A Lisa Koch.

18 Q And who is copied?

19 A I was copied.

20 Q Okay. And if you read the first sentence of the second
21 sort of paragraph there, Nova has met, can you read that,
22 please?

23 A "Nova has met the contingency requirement by raising over
24 \$10 million for capital. Nova" --

25 Q Okay. And did he attach information to Ms. Koch about

Hanuscin - Direct (Bar)

14

1 the capital that was raised? And I can give you a hard copy
2 if that would help you.

3 A Yes, please.

4 MS. BARRY: May I approach, Your Honor?

5 THE COURT: Yes.

6 (Pause)

7 A Yes.

8 Q Okay. So in this statement, Nova has met the contingent
9 -- contingency requirement by raising over 10 million of
10 capital. If we take a look at pages 10 and 11 of Government's
11 Exhibit 140, is this the capital that he is referring to?

12 A Yes.

13 Q Okay.

14 MS. BARRY: And if we could please publish, Your
15 Honor, page 10 of 11, which is the second to the last page,
16 please.

17 THE COURT: Any objection?

18 MR. EGAN: No, Your Honor.

19 MR. ENGLE: No, Your Honor.

20 THE COURT: Granted.

21 BY MS. BARRY:

22 Q And so if we look at that first page, do you see subtotal
23 capital raised through September 30, 2009 and deposited with
24 HC, \$2.551 million?

25 A (No verbal response)

Hanuscin - Direct (Bar)

15

1 Q So do you know whether or not that was money that was in
2 escrow at the time?

3 A Yes.

4 Q Okay. And then if we look at the next subtitle heading
5 or sub -- at the bottom of the page, subtotal escrow deposits
6 received October 29 and deposited with HC some \$2.7 million.
7 Was that money that was in escrow or at -- with -- physically
8 with the holding company or bank at that point?

9 A Yes.

10 Q Okay. And so this money, had it been included in the
11 bank's capital levels?

12 A Yes.

13 Q And looking at the Anthony Bonomo investment there of
14 \$2.5 million, at this time on December 15th, 2009, were you
15 aware that this investment had come from a loan from the bank,
16 Nova Bank?

17 A I did not make that connection.

18 Q Okay. And was that indicated anywhere in the information
19 that was provided to Lisa Koch?

20 A Well, this insert or attachment was provided to Lisa
21 Koch.

22 Q Okay. In this -- anywhere in this insert, and take your
23 time to look at it, is there any indication that the \$2.5
24 million investment from Anthony Bonomo came from a loan from
25 Nova Bank?

Hanuscin - Direct (Bar)

16

1 (Pause)

2 A Based on the memo -- or letter dated December 15th, 2009,
3 Attachment 2 says that the 2. -- one moment --

4 (Pause)

5 A Attachment 2 just specifically talks about September, but
6 doesn't discuss October.

7 Q Okay. And we're looking at Attachment 5. Is there
8 anything in Attachment 5 that indicates that the --

9 A Attachment 5 is -- is a list of investors that represent
10 \$10.2 million of common -- common equity raised.

11 Q Okay. And is there anything in the letter from -- to Ms.
12 Koch from Brian Hartline that is part of Government's Exhibit
13 140 where he indicates that the \$2.5 million investment from
14 Anthony Bonomo is money borrowed from the bank?

15 A No. I don't see anything where it says --

16 Q Okay.

17 A -- for the funds that was loaned to him.

18 Q Okay. And if we take a look at the next page of the
19 attachment, number 5 from Government's Exhibit 140, and
20 looking at subtotal there, subtotal escrow deposits received
21 December 2009, some \$4.945 million. Do you see that?

22 A Yes.

23 Q Okay. And looking at the column, it says -- there's a --
24 there are names and then it says capital raise, and then
25 there's a date on that next column. Do you see that? And

Hanuscin - Direct (Bar)

17

1 then the amounts that are going to be invested or are
2 invested? I don't know. Can you explain what the 18 December
3 '09 means?

4 A Speaking for myself, because my name is on this list,
5 that was a commitment made by myself to invest.

6 Q Okay.

7 A I do know that I was using funds from an IRA to make the
8 investment, so it took me some time to have the cash
9 transferred to the bank.

10 Q Okay. So is December 18, 2009 a date after December 15,
11 2009?

12 A Yes.

13 Q Okay. So is this sort of the money that's expected to be
14 in by December 18, 2009?

15 A Yes.

16 Q Okay. And then there is a total there of 10.249 million,
17 and is that the total of all of the subtotals that we looked
18 at --

19 A Yes.

20 Q -- on this attachment? Okay. Did you prepare this
21 document?

22 A No, I did not.

23 Q Who prepared this document?

24 A This looks like a document that was prepared by Brian.

25 Q Okay. Now, if we could take a look, sir, at Government's

Hanuscin - Direct (Bar)

18

1 Exhibit 145.

2 MS. BARRY: And may I approach, Your Honor?

3 THE COURT: Yes.

4 MS. BARRY: It's a multi-page document.

5 THE COURT: Yes.

6 MS. BARRY: And this has been moved into evidence.

7 And may it be published, Your Honor?

8 THE COURT: Yes.

9 BY MS. BARRY:

10 Q So if we just take a look at the first page of
11 Government's Exhibit 145, who -- who is this email from?

12 A The email -- email is from my -- myself. Excuse me.

13 Q And when was it sent?

14 A Wednesday, December 16th, 2009.

15 Q And who is the email to?

16 A Lisa Koch.

17 Q And do you have attachments to this email?

18 A Yes, I do.

19 Q And what are the attachments?

20 A List of capital raises and supporting documents.

21 Q Okay. And so what do you write to Ms. Koch?

22 A Here is the -- here is most of the support for cash
23 received. The remainder will follow shortly.

24 Q Okay. And if we could look at the next page. And
25 looking at this -- what would you call this document? A

Hanuscin - Direct (Bar)

19

1 spreadsheet or something else?

2 A It's a spreadsheet to detail expected or accepted --
3 received and expected capital.

4 Q All right. And did you prepare this spreadsheet?

5 A No, I did not.

6 Q Who prepared this spreadsheet?

7 A I would believe Brian Hartline.

8 Q And looking at the number there, some \$2.85 million, is
9 that a number that's different than 10? 10 million?

10 A Yes.

11 Q Okay. And so when it says clearing date documented, do
12 you know what he meant when he put that in there?

13 A No, I do not.

14 Q And as far as the -- the other pages of this exhibit, did
15 you pull those pages?

16 A I'm sorry, can you repeat the question?

17 Q The other pages that follow this spreadsheet, did you put
18 that together?

19 A No, I did not.

20 Q Okay. Were you given this information by someone at the
21 bank?

22 A Yes. Brian Hartline.

23 Q Okay. And did he tell you to forward it to Lisa Koch?

24 A He gave it to me to go along with the attachment, yes.

25 Q Okay.

Hanuscin - Direct (Bar)

20

1 A Part of the email.

2 Q Now, do you know whether or not Nova Bank ever received
3 the TARP funding?

4 A No. It was turned down.

5 Q Okay. And I'd like you to take a look at Government's
6 Exhibit 163.

7 MS. BARRY: And this is just for the witness,
8 please.

9 BY MS. BARRY:

10 Q Looking at Government's 163, what's 163?

11 A It's an email, original email from Brian Hartline to
12 Wayne Leevy and Thomas Martell (phonetic).

13 Q Okay. And are you copied on that email?

14 A Along with Beth Martin, yes.

15 Q Okay. And then do you respond to that email? Do you
16 reply to that email?

17 A Yes.

18 Q Okay. And what is the date of the first email from Brian
19 Hartline?

20 A December 22nd, 2009.

21 Q Okay.

22 MS. BARRY: Your Honor, the Government moves for the
23 admission of Government's Exhibit 163.

24 MR. EGAN: No objection.

25 MR. ENGLE: No objection.

Hanuscin - Direct (Bar)

21

1 THE COURT: Granted.

2 MS. BARRY: May it be published?

3 THE COURT: Yes.

4 MS. BARRY: And if we could look at the first email
5 from Brian Hartline.

6 BY MS. BARRY:

7 Q And, again, who is this email from?

8 A Brian Hartline.

9 Q And when was it sent?

10 A December 22nd, 2009.

11 Q Okay. And what is the first line of that email?

12 A "I just wanted to let you know Nova has been officially
13 turned down to receive its CPP funding."

14 Q Okay. So is that, to the best of your recollection, the
15 day that Nova was turned down from TARP?

16 MR. EGAN: Objection. Leading.

17 THE COURT: Sustained.

18 BY MS. BARRY:

19 Q Prior to December 22nd, did you receive any email or
20 communication with Brian Hartline that the CPP funding had
21 been turned down?

22 A No.

23 Q And then in the upper email, what do you say in response
24 to the CPP funding being turned down officially at this point?

25 A "As I mentioned to you yesterday, I will keep my

Hanuscin - Direct (Bar)

22

1 commitment."

2 Q Okay. Okay. Now, after -- after December of 2009, at
3 some point was there an audit of the bank by an outside -- by
4 its outside auditor, KPMG?

5 A Can you repeat the question?

6 Q Sometime after December of 2009, was there an audit
7 conducted by the bank's outside auditor, KPMG?

8 A Yes.

9 Q Okay. And according to that audit, what, if anything,
10 came into question related to the bank's capital?

11 A During -- during the audit process, the accounting firm
12 raised the question of whether Levin -- Mr. Levin's
13 contribution could count as capital.

14 Q Okay. Because at that point, had you counted it as
15 capital?

16 A Yes.

17 Q Okay. And do you know why there was a question on
18 whether or not it could be counted as capital?

19 A They raised the question because of the timing of the
20 loan.

21 Q Okay. And at that point -- the timing of the loan to Mr.
22 Levin?

23 A Yes.

24 Q Okay. And did other -- did other -- did additional
25 capital also come into question based on the audit?

Hanuscin - Direct (Bar)

23

1 A They originally brought up Mr. Levin's loan, and then
2 they asked us to go back and review any capital raises that
3 were near a specific date to loans, any loans issued.

4 Q Okay. And do you know what other investments came into
5 question?

6 A I believe there was three others.

7 Q Okay. And do you recall what they were at this point?

8 A Mr. Bonomo is one of them, but I don't recall the other
9 two names.

10 Q Okay. And because -- well, what -- what were you told
11 about -- about that?

12 MR. EGAN: Objection.

13 THE COURT: By?

14 BY MS. BARRY:

15 Q Did Mr. Hartline tell you what the issue was with respect
16 to that capital?

17 A I'm not sure of your question.

18 Q Okay. Was there any kind of meeting where that was
19 discussed?

20 A Once the accounting firm brought it up, it was discussed
21 amongst management.

22 Q Okay. And so did you attend a meeting where KPMG
23 presented the issue?

24 A My recollection is that it was brought up by the manager
25 on -- on site. It really wasn't brought up to an issue until

Hanuscin - Direct (Bar)

24

1 the partner brought it up at the board meeting.

2 Q Okay. And what was -- what, if anything, did Mr.
3 Hartline say about this capital?

4 A At first, he didn't agree with their -- their judgment.

5 Q Okay. And that was these loans could not be called
6 capital -- or could not count as capital?

7 A Mr. Hartline believed that the -- they could be included
8 -- or be included as capital and we had to research the issue.

9 Q Okay. And what did the bank ultimately decide?

10 A Well, the bank, because they -- the accounting firm did
11 not budge on their position, had to agree with it.

12 Q Okay. And what -- what did the bank have to do with
13 regard to those -- that money that the bank had previously
14 counted as capital?

15 A They had to reduce their capital.

16 Q Okay. And I'd like you to take a look at what's been
17 marked as Government's Exhibit 180. And if we could take a
18 look at the first email and time, which I believe is from you,
19 and what is -- what is 180?

20 A It's an email from myself to Harold Shaw (phonetic).

21 Q Okay. And who's -- who is that?

22 A I believe he was Lisa Koch's replacement.

23 Q Okay. And so is he with what agency?

24 A FDIC.

25 Q Okay. And is that the agency who was regulating Nova

Hanuscin - Direct (Bar)

25

1 Bank?

2 A Yes.

3 Q Okay. And who is copied on this email?

4 A Brian Hartline.

5 Q Okay.

6 MS. BARRY: And, Your Honor, the Government moves
7 for the admission of Government's Exhibit 180.

8 MR. EGAN: No objection.

9 MR. ENGLE: No objection.

10 THE COURT: Admitted.

11 BY MS. BARRY:

12 Q And if you could just please --

13 MS. BARRY: And may it be published, Your Honor?

14 THE COURT: Yes.

15 Q Okay. And if you could just read the sentence that
16 starts Nova Bank, and Nova Bank is actually underlined.

17 A "Nova Bank will amend the December 2009, March 2010, and
18 June 2009 call reports to reflect the reduction of regulatory
19 capital of \$8.3 million related to loans to existing
20 shareholders."

21 Q Okay. And can you read the next sentence, please?

22 A "The effect of this adjustment will cause Nova to fall
23 below adequately capitalized -- adequately capital to un --
24 under capitalized for the risk-based capital ratio of 6.33
25 percent at 12/31/10, and 6.70 at June 30th, 2010."

Hanuscin - Direct (Bar)

26

1 Q Okay.

2 MS. BARRY: May I have a moment, Your Honor?

3 THE COURT: Surely.

4 (Pause)

5 BY MS. BARRY:

6 Q Mr. Hanuscin, did you personally ever tell anyone at the
7 FDIC that Mr. Levin had a \$5 million loan with the bank?

8 A I don't recall, but I must have.

9 Q During the TARP process, did you ever tell Lisa Koch that
10 Anthony Bonomo had a \$2.5 million loan with Nova Bank?

11 A I'm -- what time frame -- throughout the whole process?

12 Q Not the whole process. In any time prior to December
13 15th of 2009, did you ever tell Lisa Koch or anyone else from
14 the FDIC that Anthony Bonomo had a \$2.5 million loan with Nova
15 Bank?

16 A I don't recall having that conversation.

17 Q Okay. Prior to December of 2009, did you ever tell Lisa
18 Koch or anyone else at the FDIC that Charles Gallub had a
19 \$500,000 loan with Nova Bank?

20 A I don't recall the name.

21 Q Okay. And, again, prior to December of 2009, did you
22 ever tell Lisa Koch or anyone else at the FDIC that George
23 Levin had a \$5 million loan with Nova Bank?

24 A Prior to December 2015? I don't recall.

25 Q Okay.

Hanuscin - Cross (Ega)

27

1 MS. BARRY: No further questions, Your Honor.

2 THE COURT: You may cross-examine.

3 MR. EGAN: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. EGAN:

6 Q Good morning, Mr. Hanuscin.

7 A Good morning.

8 Q We'll go into this in all the detail, but before we do, I
9 want to just ask you about an answer you gave just a few
10 minutes ago. You said to the prosecutor that when KPMG
11 brought up this issue of whether these loans counted as
12 capital, I tried to write down your answer exactly, you wrote
13 -- you said, "Mr. Hartline believed that they could be counted
14 as capital and he didn't agree with it," correct?

15 A Correct.

16 Q And so now we are talking about April 2010, right? You
17 have to say yes or no.

18 A Yes. Sorry.

19 Q And in April 2010, when KPMG said these couldn't count as
20 capital, Mr. Hartline did not believe they were correct?

21 A Correct.

22 Q You didn't believe they were correct either, did you?

23 A Correct.

24 Q All right. We're going to get back to that. You went to
25 work at Nova Bank in 2008?

Hanuscin - Cross (Ega)

28

1 A Correct.

2 Q And you had been the CFO at Royal Bank?

3 A Yes.

4 Q And you had worked in banking for 15 years, I think you
5 said, at that point?

6 A Since 1986.

7 Q So give or --

8 A Excess of 20.

9 Q -- give or take. And you had been the CFO at Royal?

10 A Yes.

11 Q And you were hired to be the CFO at Nova because they
12 were expanding, correct?

13 A Correct.

14 Q And one of the things they were doing was taking over
15 another bank or buying another bank called Pennsylvania
16 Business Bank?

17 A Yes.

18 Q And you were going to be the CFO of that as well, right?

19 A Yes.

20 Q And at first, and it's a little complicated, but there's
21 a period of time during which the two entities exist sort of
22 both at the same time, right?

23 A Yes.

24 Q And during that time, you had to be the CFO of both?

25 A Yes.

Hanuscin - Cross (Ega)

29

1 Q And then after that you became the CFO of the combined
2 entity?

3 A Yes.

4 Q And obviously you had plenty of experience to do that
5 job, correct?

6 A Yes.

7 Q Now, as the CFO, your main issues are looking over --
8 making sure the accounting is basically straight, right?

9 A Yes.

10 Q And that all of the regulatory reports that are given to
11 the Government are accurate and truthful, correct?

12 A Yes.

13 Q And you gave regulatory reports, I think we call them
14 call reports, to the government basically? And when I say the
15 government, maybe we should clarify that. So you were not --
16 the bank now I'm talking about, not the holding company. The
17 bank was not overseen by the Federal Reserve Bank, correct?

18 A Correct.

19 Q And that's because they were a state chartered bank?

20 A Correct.

21 Q And so the regulations of the Federal Reserve Bank
22 weren't the ones that applied to the -- to Nova Bank, correct?

23 A Yes.

24 Q So the regulatory agencies that you reported to were not
25 the Federal Reserve Bank, but the Federal -- the FDIC and the

Hanuscin - Cross (Ega)

30

1 Pennsylvania Department of Banking, right?

2 A Yes.

3 Q And you had to make reports to both of them?

4 A Yes.

5 Q And these were these things called call reports we've
6 talked about?

7 A Yes.

8 Q Okay. And both of them would inspect, correct?

9 A Yes.

10 Q And in all your time at Nova, when you -- when you made
11 those reports, you always made them truthfully and accurately,
12 correct?

13 A Yes.

14 Q And Brian Hartline was your boss, right?

15 A Yes.

16 Q In all that time, he never once pressured you to change
17 anything to satisfy them, to make things look better, did he?

18 A No, he didn't.

19 Q Never asked you to do anything like that?

20 A No.

21 Q Now, one of the things we were talking about a bit
22 yesterday is the acquisition of DVFG. Do you remember that?

23 A Yes.

24 Q And that was another thing that Nova was going to
25 undertake in 2009?

Hanuscin - Cross (Ega)

31

1 A Yes.

2 Q And you were intimately involved in that as well, were
3 you not?

4 A Yes.

5 Q In fact, you provided some information for what was, I
6 guess they call them, private placement memos?

7 A Yes.

8 Q And a private placement memo is when the bank -- the
9 holding company actually is trying to raise capital, right?

10 A Yes.

11 Q They have to send out this private placement memo and
12 tell folks about what their plans are and such, right?

13 A Yes.

14 Q And in Dec -- or in January of 2009 -- or actually it was
15 by March, Nova sent out one of those private placement memos
16 asking for funds to acquire DVFG, correct?

17 A Yes.

18 Q And that private placement memo didn't speak to anything
19 about TARP, did it?

20 A Can you repeat the date?

21 Q March 2009.

22 A March? No.

23 Q That was just about DVFG.

24 A Right.

25 Q Because right then we had -- Nova had applied for TARP,

Hanuscin - Cross (Ega)

32

1 but its real concern was on acquiring DVFG, correct?

2 A Correct.

3 Q And do you recall, you had to prepare a lot of documents
4 to -- to try and close the DVFG deal, right?

5 A I didn't prepare the documents. I -- I was more involved
6 in preparing financial statements for them.

7 Q That would become part of those documents?

8 A That would become part of those documents.

9 Q And -- and do you recall that the closing date for DVFG
10 was supposed to be June 30th? Do you remember that?

11 A Yes.

12 Q That closing didn't occur, correct?

13 A No.

14 Q And that was in large part because of a number of issues
15 having to do with DVFG, right?

16 A Yes.

17 Q Now, in addition to the DVFG acquisition, you were also
18 responsible in 2009 for issues related to opening a new
19 branch, right?

20 A Yes.

21 Q And Nova did indeed open -- indeed did open a new branch
22 in the winter of 2009?

23 A Yes.

24 Q And so essentially as we reach March of 2009, Nova is
25 well capitalized, correct?

Hanuscin - Cross (Ega)

33

1 A Um-hmm.

2 Q You have to say yes or no.

3 A Yes. I'm sorry.

4 Q Okay. But something comes up that causes Nova to no
5 longer be well capitalized, correct?

6 A Yes.

7 Q And that something was this OTTI security issue, correct?

8 A Yes.

9 Q And that was something that basically you were told by
10 Lisa Koch, or somebody from the FDIC, that Nova had certain
11 securities that it owns that needed to be downgraded?

12 A Yes.

13 Q And as a result of that, you had to do an analysis?

14 A Yes.

15 Q And in that analysis, you, -- applying the new regulation
16 or basically the new standard that had been given to you by
17 the government, right? --

18 A Yes.

19 Q -- you then did those calculations and you came up with
20 the math and it turned out that Nova was no longer well
21 capitalized, correct?

22 A Correct.

23 Q And when you were doing those calculations that caused
24 Nova to go from well to adequately capitalized, did Brian
25 Hartline put any pressure on you to change the numbers?

1 A No.

2 Q Did he ever ask you, like, make it look a little better
3 because we kind of need to be well capitalized?

4 A No.

5 Q And so you changed them to the best of your ability, --

6 A Yes.

7 Q -- right?

8 A Yes.

9 Q And you provided that information to the government?

10 A Yes.

11 Q And that was obviously during the time that the TARP --
12 the TARP application was in play, correct?

13 A Yes.

14 Q Okay. Now, let's talk a little bit about the TARP
15 application itself. You were actually the person who kind of
16 first learned of this, right?

17 A Yes.

18 Q And that's because as a CFO you keep up on what's going
19 on in your field, right?

20 A Yes.

21 Q And it came to your attention that there was this TARP --
22 these TARP funds that might be a good thing for the bank,
23 right?

24 A Yes.

25 Q Now, as a CFO, you couldn't make the decision to apply

1 for TARP funds, could you?

2 A No.

3 Q And, in fact, even as the CEO, Brian Hartline couldn't
4 make the decision to apply for TARP funds, could he?

5 A No.

6 Q In fact, that was a decision that had to be made by the
7 board of directors?

8 A Yes.

9 Q And so when you got this information about the TARP
10 program, you provided it to the board of directors, correct?

11 A Yes.

12 Q And the reason you provided it to the board of directors
13 was so that they could review it and make a decision whether
14 it was worth doing?

15 A Yes.

16 Q And do you recall that there was some discussion about
17 that with the board?

18 A Yes, I do.

19 Q And there were some members of the board who weren't sure
20 they even wanted to do it, right?

21 A Yes.

22 Q And -- and there was a guy by -- Ed DiMarcantonio, he's
23 the president of the board, right, or chairman of the board?

24 A Chairman.

25 Q And so he's actually the boss, right?

Hanuscin - Cross (Ega)

36

1 A Yes.

2 Q That's who Mr. Hartline has to report to?

3 A Well, he reports to the board and he sat on the board.

4 Q Right. And there's also a gentleman by the name of Wayne
5 Leevy on the board, correct?

6 A Yes.

7 Q And Mr. Leevy is himself a financial guy, right?

8 A Yes.

9 Q In fact, he was the head of the audit committee?

10 A Yes, he was.

11 Q And the audit committee oversees all of those financial
12 functions that you're sort of responsible for, correct?

13 A Yes.

14 Q So if there was something going on at the bank that you
15 thought was improper, you could go directly to the audit
16 committee and talk to them about it, right?

17 A Yes.

18 Q And the whole point of that is, you wouldn't have to go
19 through Mr. Hartline, who happens to be your boss, right?

20 A Correct.

21 Q Now, in your whole time there, you never went to the
22 audit committee and said that Mr. Hartline ever did anything
23 improper, did you?

24 A No, I didn't.

25 Q Now, one of the reasons the board was debating whether or

Hanuscin - Cross (Ega)

37

1 not they should get involved with TARP was because they were a
2 little concerned about how it would look, right? Remember
3 that?

4 A I remember there was discussion at one of the points was
5 that -- wasn't sure what the government was going to demand
6 because it was the early stages.

7 Q Right.

8 A That's one of their concerns.

9 Q And you were -- you along with Mr. Hartline were
10 basically the people who communicated back and forth with the
11 FDIC during this whole period, correct?

12 A Yes.

13 Q And we're not going to look at the application again, but
14 you remember the application is like a two-pager?

15 A Yes.

16 Q And then they asked for a whole lot more information,
17 correct?

18 A Correct.

19 Q And every time they asked you for information, you
20 provided it, right?

21 A Sure. Yes.

22 Q Anything they asked for, you told them?

23 A I'm sorry?

24 Q Anything they asked for, you gave them?

25 A Yes, I did.

Hanuscin - Cross (Ega)

38

1 Q And they never -- would it be fair to say that it was not
2 the most transparent process?

3 A Yes.

4 MS. BARRY: Objection.

5 THE COURT: Sustained.

6 BY MR. EGAN:

7 Q Well, put it this way, were you confused at all about
8 what the heck they wanted?

9 A At the time we applied for TARP, the government really
10 didn't know how to handle private companies, so they were not
11 providing information for us. We were a privately held
12 company.

13 Q So there was a long period of time where you weren't sure
14 what they even wanted?

15 A Yes.

16 Q And other than Lisa Koch, do you have any idea like how
17 the decision was made at TARP?

18 A Yeah. We were told that the regional FDIC would give us
19 first approval, then it would go to the national, and then the
20 U.S. Treasury would have final approval.

21 Q Right. So there were three levels?

22 A Yes.

23 Q But you never talked to anybody but the FDIC, right?

24 A No, I didn't.

25 Q So you don't have any idea who ultimately made the

Hanuscin - Cross (Ega)

39

1 decision?

2 A No, I don't.

3 Q And you don't have any idea what information they used to
4 make that decision?

5 A No, I do not.

6 Q Now, it would be fair to say, would it not, Mr. Hanuscin,
7 that the events of 2009 are a long time ago?

8 A Yes.

9 Q And that your independent recollection of them is perhaps
10 not perfect?

11 A Yes.

12 Q But with the use of documents, you can essentially have
13 that memory refreshed, right?

14 A Yes.

15 Q And you would also say, sir, that -- you would agree with
16 me, would you not, that you have met with the Government a few
17 times over the last few years to talk about this?

18 A Yes.

19 Q And when you met to talk with -- when you met with them
20 to talk about it, they were mostly focused on these loans,
21 correct?

22 A Yes.

23 Q They didn't ask you about things like earnings?

24 MS. BARRY: Objection.

25 THE COURT: Sustained.

Hanuscin - Cross (Ega)

40

1 BY MR. EGAN:

2 Q Were you ever asked by the Government about the bank's
3 earnings?

4 MS. BARRY: Objection.

5 THE COURT: Counsel, may I see you, please?

6 MR. EGAN: Sure.

7 THE COURT: Let's take our morning break at this
8 time, please.

9 (Jury out at 10:28 a.m.)

10 (Sidebar begins)

11 THE COURT: All right. Basis for the objection?

12 MS. BARRY: Your Honor, there's been no prior
13 inconsistent statement, so I'm not sure what -- what this line
14 of questioning is -- how this is appropriate.

15 THE COURT: Counsel?

16 MR. EGAN: I'm developing the fact that his memory
17 of this thing is highlighted by the fact that all they would
18 talk about was the loans and the other stuff he's kind of
19 forgotten about.

20 MS. BARRY: Your Honor, that's --

21 THE COURT: Okay. But relevant --

22 MS. BARRY: I don't --

23 MR. EGAN: Forgive me for trying, Judge.

24 THE COURT: Relevancy is more my concern. All
25 right. The objection is sustained.

Hanuscin - Cross (Ega)

41

1 MR. EGAN: Very well.

2 MS. BARRY: Thank you.

3 MR. EGAN: How long do we have?

4 THE COURT: 15 minutes. Maybe an hour.

5 (Sidebar ends)

6 THE COURT: We're in recess.

7 MR. IGNALL: Thank you, Your Honor.

8 (Off the record/on the record)

9 THE COURT: -- still here?

10 UNIDENTIFIED COUNSEL: Yes, sir.

11 THE COURT: All right.

12 MR. IGNALL: Yeah, one moment.

13 THE COURT: Surely. He wants to put something on
14 the record.

15 MR. IGNALL: Oh, okay.

16 MR. EGAN: Your Honor, my client may be excused,
17 correct?

18 THE COURT: Sure.

19 (Pause)

20 THE COURT: Yes, sir.

21 MR. SCHWARTZ: Thank you, Your Honor.

22 MR. IGNALL: Your Honor, I have spoken to Mr.

23 Schwartz. He raised a concern about Ms. Musser's testimony

24 and what he believes is -- I don't know if it's a prior

25 inconsistent statement or a lack of a prior statement, and he

Colloquy

42

1 requested --

2 THE COURT: I'm sorry, who?

3 MR. IGNALL: Ms. Musser, who testified yesterday.

4 MR. SCHWARTZ: Would you like us to come up to
5 sidebar? Would that be easier?

6 THE COURT: It doesn't matter. I'm just trying to
7 understand if we're talking about somebody who's already
8 testified, that's all.

9 MR. IGNALL: Yes, we're talking about somebody who's
10 already testified. I'll let Mr. Schwartz raise his issue and
11 I'll give you my response.

12 THE COURT: All right.

13 MR. SCHWARTZ: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. SCHWARTZ: We've approached the Government about
16 getting the rough notes from the interviews of Ms. Musser.
17 There were five of them. Four were conducted by agents who
18 are in the building now, and then one conducted in 2010 we're
19 trying to identify and locate that -- that agent.

20 I've asked the Government to produce them to us
21 because we believe that there are inconsistencies with Ms.
22 Musser's testimony either contained or a lack of evidence of
23 statements that she made in -- in the rough notes. And so
24 we'd like to see the rough notes to compare them to what's in
25 the -- the final MLIs and, if need be, we've subpoenaed the

Colloquy

43

1 agents who were responsible for those MLIs and presumably for
2 those rough notes as well, and we've asked the Government for
3 them.

4 MR. IGNALL: And, Your Honor, I don't believe
5 there's anything that's inconsistent, but pursuant to Ramos,
6 what I'd like to do is, if I could ask one of your court
7 staff, I have a copy of each of the -- there are four reports
8 that agents in this case prepared. The fifth one that Mr.
9 Schwartz is talking about was involved, I believe, in the
10 Rothstein case. I don't have any access to rough notes, if
11 any exist in that.

12 But what I'd like to do is, if we could, ask one of
13 your court staff perhaps to make a copy of the report
14 interview, and I have the rough notes behind it, and then if
15 the Court wants to compare to make sure they're consistent, I
16 think that's appropriate under Ramos.

17 THE COURT: Consistent with her testimony of --

18 MR. IGNALL: No, no, no, no. The only question is,
19 are the rough notes consistent with the written --

20 THE COURT: MLI?

21 MR. IGNALL: -- the typed report that Mr. Schwartz
22 has.

23 THE COURT: All right.

24 MR. SCHWARTZ: Thank you, Mr. Ignall. Your Honor,
25 it's our position that the best party to review any evidence

1 for exculpatory materials of course is the defense, and we
2 would ask that the rough notes be turned over directly to us.
3 But, that said, I do appreciate Mr. Ignall's compromise.
4 However, it's our position that the rough notes should be
5 produced to us in this particular instance when there were
6 particular challenges to -- to Ms. Musser's testimony.

7 THE COURT: Recognizing that a trial court does not
8 review the nature of this kind of written recordation, as
9 opposed to any kind of recordation, with the eye of an
10 advocate, what does Ramos say in terms of who has the
11 authority to review?

12 MR. IGNALL: Ramos says that it's the Court that
13 would review it in camera. The only issue here is whether
14 there's something -- it's not a matter of whether there's
15 something inconsistent in the typewritten report with what Ms.
16 Musser said. But if Mr. Schwartz wants to call one of the
17 agents and say, assuming he's laid the predicate, did Ms.
18 Musser tell you X, that's fine.

19 What Mr. Schwartz is asking were the handwritten
20 notes that the agents took, and the only question under Ramos
21 is, is there some reason to think there's something different
22 between the handwritten notes and the typewritten report, or
23 is there something exculpatory that's not contained in the
24 typewritten report. I'm not aware of either of those. But
25 under Ramos, I believe it's appropriate for the Court to

Colloquy

45

1 review that in camera and then make that determination. I
2 realize it's adding an extra burden to the Court.

3 THE COURT: Well, I'm just -- I just want to focus
4 on exactly my responsibility in this under Ramos.

5 MR. IGNALL: And I believe there are two -- and
6 maybe I'll let Mr. Schwartz say, I believe there are two items
7 that Mr. Schwartz raised with -- with Ms. Musser. One was a
8 statement that Ms. Musser said something to the effect of, Mr.
9 Bekkedam never approached her to invest in Nova. That's in
10 the, I believe, 2012 written -- typewritten report. And as
11 the Court will see, it's in the agent's handwritten notes.
12 The other I believe was about -- I'll let Mr. Schwartz say it.
13 I don't want to say it wrong. I only remember two.

14 MR. SCHWARTZ: Your Honor, --

15 THE COURT: Mr. Schwartz, let me suggest this before
16 you do. If you would, please, reduce the two areas with
17 specificity to the writing, serve it upon the Government, and
18 then discuss it, and then submit it to me.

19 MR. IGNALL: Okay.

20 THE COURT: I think it would be more helpful.

21 MR. IGNALL: Okay. We can do that, Your Honor.

22 THE COURT: All right.

23 MR. SCHWARTZ: I'll send a letter to the Government
24 this evening --

25 THE COURT: I'm sorry?

Colloquy

46

1 MR. SCHWARTZ: I will send a letter to the
2 Government this evening identifying specific --

3 THE COURT: That's fine.

4 MR. IGNALL: And then we can provide whatever MLI is
5 attached to that.

6 THE COURT: Great.

7 MR. IGNALL: Okay. We can do that. Thank you, Your
8 Honor.

9 THE COURT: All right. Surely.

10 MR. SCHWARTZ: Thank you.

11 (Recess at 10:35 a.m. to 10:56 a.m.)

12 (Audio resumes as follows)

13 BY MR. EGAN:

14 Q -- Hanuscin, I was asking you about the fact that this
15 was a long time ago and that your memory of these events has
16 obviously, like everything, faded with time?

17 A Yes.

18 Q And in that regard, you've spoken a lot on direct
19 examination about capital and its interplay with the TARP
20 process, correct?

21 A Yes.

22 Q But you would agree with me, would you not, that there
23 were other factors in play with regard to the TARP
24 application?

25 A (No response)

Colloquy

47

1 Q Well, let me show you something.

2 A Yeah.

3 MR. EGAN: Could we have D-18 for the witness only?

4 And if we could just blow up the top section of that.

5 BY MR. EGAN:

6 Q Sir, that's an email from Lisa Koch to you, correct?

7 A Yes.

8 Q And it's dated April 17th, 2009?

9 A Yes.

10 Q And it's regarding TARP, correct?

11 A Yes.

12 Q Now, if we could go down to the second paragraph, it
13 says: "Their areas of concern are leverage at the holding
14 company, earnings and asset quality." Correct?

15 A Yes.

16 Q Now, you're familiar with Camels, right?

17 A Yes.

18 Q And that's an acronym for a whole bunch of important
19 stuff for the bank, right?

20 A Yes.

21 Q And earnings is one of the letters in Camels, correct?

22 A Yes.

23 Q And earnings and capital are two separate buckets?

24 A Yes.

25 Q Asset quality, similarly, is another bucket, right?

Colloquy

48

1 A Yes.

2 Q So Ms. Koch is asking you about these three items for
3 information for the TARP process, correct?

4 A Correct. Excuse me. Correct.

5 Q Okay. And obviously so they had other interests besides
6 just capital, correct?

7 A Correct.

8 MR. EGAN: Now, if we could go to G-17. And I
9 believe this has been admitted.

10 MS. BARRY: Yes.

11 MR. EGAN: So it can be published.

12 BY MR. EGAN:

13 Q And, Mr. Hanuscin, are you able to see that?

14 A Yes.

15 Q And that is an email from you to Ms. Koch, correct?

16 A Correct.

17 Q And it contains a whole lot of information, does it not?

18 A Yes.

19 Q And among those things it contains are financial
20 statements and results of operation, correct?

21 A Correct.

22 Q And projections?

23 A Yes.

24 Q And updated asset quality information, correct?

25 A Yes.

Colloquy

49

1 Q So you're responding to the questions that you're being
2 asked about the bank?

3 A Yes.

4 Q And all the information you're providing her is truthful
5 and accurate, correct?

6 A Yes.

7 Q Now, the last -- if we go to the last paragraph on the
8 page, this is: "Has an OTT analysis been -- 3/31/09." This
9 is the issue we've been talking about that caused the bank to
10 become not well capitalized, right?

11 A Yes.

12 Q Okay. And, once again, you provided whatever information
13 they asked for?

14 A Yes.

15 Q And all of it was truthful and accurate, correct?

16 A Yes.

17 Q And Brian Hartline certainly never told you to send
18 anything that wasn't truthful or accurate?

19 A No, he did not.

20 Q All right. Now, just a very brief side journey here.

21 MR. EGAN: If we could have D-134 for the witness,
22 please.

23 BY MR. EGAN:

24 Q You were asked a number of questions about an agreement
25 that Barry Bekkedam had for consulting fees. Do you remember

Colloquy

50

1 that?

2 A Yes.

3 Q Now, as a CFO, you were involved in capital raises,
4 correct?

5 A Yes.

6 Q And you're -- you're --

7 MR. EGAN: Excuse me. This is D-134, please.

8 That's 133.

9 BY MR. EGAN:

10 Q You're familiar that in order to raise capital,
11 oftentimes banks need to hire outside people, correct?

12 A Yes.

13 Q And when banks hire outside people, they usually hire
14 what's called investment bankers, right?

15 A Yes.

16 Q And investment bankers charge a fee for what they do, do
17 they not?

18 A Yes, they do.

19 Q So it's not unusual for an institution that's trying to
20 raise funds to go and seek an outside consultant to help raise
21 funds, right?

22 A Correct.

23 Q Now, you were asked a number of questions by Ms. Barry
24 about the bank hiring Mr. Bekkedam. Do you remember those?

25 A I'm sorry, can you repeat? I coughed.

Colloquy

51

1 Q You were asked a number of questions by Ms. Barry about
2 the bank hiring those -- the consultant, Barry Bekkedam,
3 right?

4 A Yes.

5 Q Okay. If you could just go to page 2 of this, and the
6 very top paragraph, and read it to yourself.

7 (Pause)

8 Q Does this refresh your recollection as to who actually
9 hired Mr. Bekkedam?

10 A The holding company.

11 Q Right. So -- because the holding company's actually the
12 entity that raises assets, correct?

13 A Yes.

14 Q So it would be the holding company that would hire Mr.
15 Bekkedam, correct?

16 A Yes.

17 Q And that would be a decision that the holding company
18 board would be involved in, correct?

19 A Yes.

20 Q And so what this is, is the agreement between the holding
21 company and Mr. Bekkedam to help raise funds, right?

22 A Yes.

23 Q All right. Now I want to talk about Mr. Levin's loan.
24 You are the CFO, right?

25 A Yes.

Colloquy

52

1 Q And as the CFO, you have a whole lot of responsibility?

2 A Yes, I do.

3 Q But one of the things you do as the CFO is sit on the
4 loan committee, correct?

5 A Yes.

6 Q And Mr. Hartline is the CEO, correct?

7 A Yes.

8 Q He has a lot of responsibility, too?

9 A Yes.

10 Q But one of the things he does is sit on the loan
11 committee, correct?

12 A Yes.

13 Q But it would be fair to say, would it not, sir, that the
14 creditworthiness of a lender is -- a borrower is not your
15 specific area of concern, correct?

16 A Yes.

17 Q And that's why you have a credit department?

18 A Yes.

19 Q And that that credit department was headed up by a guy by
20 the name of Mark Poliski?

21 A Yes.

22 Q Remember him? And that it was his job to determine
23 whether or not a borrower was creditworthy, correct?

24 A Yes.

25 Q So when you would come to the loan committee, you would

Colloquy

53

1 essentially read whatever was presented to you, because that's
2 your duty, correct?

3 A Yes.

4 Q And make an analysis of what was presented to you and
5 decide whether to vote yes or no, correct?

6 A Yes.

7 Q But obviously it would be very important to you if Mr.
8 Poliski had said a loan was not -- was inappropriate, right?

9 A Right.

10 MR. EGAN: So if we could go to Government's Exhibit
11 43. And if we could blow up the -- well, blow up the top
12 section first. And this has been admitted, so you can publish
13 it.

14 BY MR. EGAN:

15 Q And this is the risk assessment summary for the loan to
16 Mr. Levin, correct?

17 A Yes.

18 Q And this would have been part of the package that was
19 presented to you before you went to the loan committee to vote
20 on this loan, correct?

21 A Yes.

22 Q Now, it's a loan for George Levin, right?

23 A Yes.

24 Q And it's for \$5 million?

25 A Yes.

Colloquy

54

1 Q Okay. Now, it says analyst, Joe Madiany. So that --
2 that's the underwriter, right?

3 A Yes.

4 Q So he -- he actually reviews it even before Mr. Poliski
5 gets it?

6 A Yes.

7 MR. EGAN: And then if we could go down to the lower
8 section and just blow up the top half of that.

9 BY MR. EGAN:

10 Q And under the purpose, it says financial investment,
11 correct?

12 A Yes.

13 Q Now, at the time you appeared before the loan committee,
14 you were provided with this risk assessment summary, you were
15 judging this as an issue having to do with Mr. Levin wanting
16 to borrow money for a financial investment, correct?

17 A My recollection of the -- of the loan is that he was
18 using the proceeds to renovate a property that he owned in --
19 in the Main Line, in addition to financial purposes.

20 Q Okay. And -- and we can address that in a minute. But
21 as -- it's been a long time since June 30th, correct?

22 A Yes.

23 Q This was the document you had before you when you made
24 your decision, correct?

25 A Yes.

Colloquy

55

1 Q And this says financial investment, correct?

2 A Yes.

3 Q Now, there may have been discussion about a house at some
4 other time, but you don't remember any discussion at the loan
5 committee about this house, do you?

6 A Not specifically, no.

7 Q Okay. Now, the date of this is June 30th?

8 A Yes.

9 Q Okay.

10 MR. EGAN: Now, if we could go to G-48, please. And
11 this has been admitted as well. And if you could blow up the
12 top, just the -- well, actually you can blow up just the part
13 that's real as opposed to the big white space. Thank you.

14 BY MR. EGAN:

15 Q This is an email from Dina Gaskins to a whole lot of
16 people at the bank, correct?

17 A Yes.

18 Q And among those people are yourself, right?

19 A Yes.

20 Q Mr. Poliski?

21 A Yes.

22 Q Mr. Patterson?

23 A Yes.

24 Q And Mr. Hartline?

25 A Yes.

Colloquy

56

1 Q And what this is, is Dina Gaskins, she worked in -- what
2 did she do?

3 A She was like -- the main office was a pseudo branch and
4 main office, and she handled the branch part of it.

5 Q Right. And she handled the wires?

6 A Right.

7 Q Okay. So this is an email from her telling you on June
8 30th, 2009 that a \$5 million wire is coming in from George
9 Levin?

10 A Yes.

11 Q So certainly nobody's hiding from you that George Levin
12 is wiring \$5 million into Nova Bank on June 30th, are they?

13 A No.

14 Q Now, you were shown an Exhibit G-116.

15 MR. EGAN: And if we could have G-116. And if we
16 could just blow up the top section.

17 BY MR. EGAN:

18 Q Now, G-116 is an email from Brian Hartline to David
19 Swartz and yourself, correct?

20 A Yes.

21 Q And Mr. Hart -- Mr. Swartz is outside counsel to the
22 bank, right?

23 A Yes.

24 Q He's with a law firm called Stevens & Lee?

25 A Yes.

Colloquy

57

1 Q And he worked for the bank a lot?

2 A Yes.

3 Q And the bank often referred to Stevens & Lee for their
4 opinion on a number of issues?

5 A Yes.

6 Q And their advice?

7 A Yes.

8 Q And Mr. Hartline is responding to a request -- a question
9 from Mr. Swartz, correct?

10 A Yes.

11 Q And the question has to do with Treasury counsel calling
12 him and asking about whether the funds were coming in or not,
13 correct? You were asked about that for Mr. Levin?

14 A Yes.

15 Q Okay. And Mr. Hartline responds that he's trying to get
16 the funds in, but he's not sure that they're going to come in,
17 correct?

18 A Yes.

19 Q And this communication is because Mr. Swartz wants to get
20 back to the folks at Treasury and tell them what's going on,
21 right?

22 A Yes.

23 MR. EGAN: Now if we can have Government's 122 for
24 the witness only.

25 BY MR. EGAN:

Colloquy

58

1 Q And, sir, do you recall whether or not Mr. Swartz told
2 the Treasury that Mr. Levin was no longer going to invest?

3 A I don't recall if Mr. Swartz had that conversation.

4 Q Okay. Well, does reading this email from Mr. Swartz to
5 this Jennifer Graham refresh your recollection?

6 (Pause)

7 A This is a correspondence that says that he's advising
8 Jennifer Graham that --

9 MS. BARRY: Objection.

10 A -- there will be no closing.

11 MS. BARRY: Objection.

12 THE COURT: Sustained.

13 BY MR. EGAN:

14 Q That doesn't refresh your recollection?

15 A No.

16 MR. EGAN: Now if we go to G-145, please.

17 Q And, sir, you would agree with me that after Mr. Levin no
18 longer could make his investment, the bank had -- or the
19 holding company, actually, had to turn to a number of other
20 sources to try and come up with the \$10 million, right?

21 A Yes.

22 Q And so basically they went out with a request for more
23 people to invest?

24 A Yes.

25 Q And they even asked you to invest?

Colloquy

59

1 A Yes.

2 Q And essentially they were trying to get as many people
3 who could invest as possible to come up with \$10 million,
4 correct?

5 A Yes.

6 Q And at the same time, the TARP, which had originally been
7 talked about in June and then talked about in August, still
8 hadn't been fully approved, correct?

9 A I'm sorry, can you repeat that?

10 Q It still hadn't been fully approved?

11 A Right.

12 Q So in the middle of December, there was a lot of back and
13 forth between you and Ms. Koch about trying to get this
14 together and make this happen, right?

15 A Yes.

16 Q And you were showed some of those emails by the
17 Government, correct?

18 A Yes.

19 Q Do you know who a guy named Joe Petrone is?

20 A Yes, I do.

21 Q He was your comptroller, right?

22 A Yes.

23 Q And he would be the kind of guy who would run reports?

24 A Yes.

25 Q And so if you wanted a big, long list of everybody who

Colloquy

60

1 was investing, you -- you would ask him to do the report for
2 you, correct?

3 A I would ask him to, if there was an escrow account that
4 the funds would be held, I'd ask him to run that.

5 Q Right. So if we could go -- well, first of all, let's do
6 the cover page. This is an email from yourself to Ms. Koch,
7 correct?

8 A Yes.

9 Q And it's dated December 16th, 2009, correct?

10 A Correct.

11 Q Now, do you recall conversations with Mr. Hartline about
12 the government saying at this point they were going to put
13 this application on hold?

14 A Yes.

15 Q And that they were likely not going to approve it?

16 A Yes.

17 Q And you knew several days prior to December 21st that it
18 was likely that the government was not going to approve this,
19 correct?

20 A Yes.

21 Q And -- but you were trying to send all the information
22 that the government asked for in hopes that they might change
23 their mind, right?

24 A Yes.

25 Q Okay. Now, if we could turn to page 2, this is a list of

Colloquy

61

1 a whole bunch of investors, right?

2 A Yes.

3 Q Now, if you wanted to get a list like this, you would ask
4 Joe Petrone for it, not Brian Hartline, right?

5 A This looks like a spreadsheet of a reconcile on an escrow
6 account.

7 Q Right. It's the kind of thing you would get from your
8 comptroller?

9 A I could, yes.

10 MR. EGAN: Now, if we could down to the -- blow up
11 the last three investors. Last three lines of that.

12 BY MR. EGAN:

13 Q Do you see a gentleman there by the name of Alan
14 Fellheimer?

15 A Yes.

16 Q And Alan Fellheimer was someone you knew, correct?

17 A Yes.

18 Q And he had accounts at Nova Bank, correct?

19 A Yes.

20 Q And he had a line of credit at Nova Bank, correct?

21 A I -- I don't recall specifically, but he was a customer
22 of the bank.

23 Q Right. And it says here -- you're telling Ms. Koch he's
24 putting \$100,000 in, correct?

25 A Yes.

Colloquy

62

1 MR. EGAN: And if we can go to page 36 of this
2 exhibit.

3 BY MR. EGAN:

4 Q Now, this was stuff that you sent to Ms. Koch because she
5 wanted some backup for some of these investments, right?

6 A Yes.

7 Q And at the time, you were basically trying to throw
8 everything together and get it down to her, right?

9 A Yes.

10 Q Okay. And even it says the remainder will follow; this
11 isn't all of it, it's just some of it?

12 A Yes.

13 MR. EGAN: If you could blow up that email. And the
14 bottom half first.

15 BY MR. EGAN:

16 Q Now, this email that you sent to Ms. Koch is from Mr.
17 Hartline to Mr. Fellheimer and it says: "From where should I
18 pull the funds for your investment?" Correct?

19 A Yes.

20 MR. EGAN: And if we could go to the top section.

21 Q It says: "My credit line." Correct?

22 A Yes.

23 Q So Mr. Fellheimer is telling Mr. Hartline, take the
24 \$100,000 out of my credit line at Nova Bank, correct?

25 A Yes.

Colloquy

63

1 Q Which is effectively a loan to Mr. Fellheimer, is it not?

2 A Yes.

3 Q And you didn't have any problem telling the -- Ms. Koch
4 about that, right?

5 A No.

6 MS. BARRY: Objection.

7 THE COURT: Overruled.

8 MR. EGAN: All right. If we could go to G-163 then.

9 BY MR. EGAN:

10 Q And G-163 is an email that you received from Mr.
11 Hartline, correct?

12 A Yes.

13 Q And it's actually a forward of an email -- oh, no, I'm
14 sorry, you're copied on it. And it basically says: "It's
15 official, we're turned down." Correct?

16 A Yes.

17 Q And it goes on to say: "Treasury is becoming more
18 concerned about providing funding to small community banks."
19 Correct?

20 A Yes.

21 Q And then in the second paragraph it says: "We are now in
22 the process of calling back all investors and giving them the
23 option to keep their capital in the bank and providing them
24 anti-dilution rights to our next capital offering, or have
25 their funds returned to them." Correct?

Colloquy

64

1 A Yes.

2 Q And this is because a lot of people who invested were
3 told that if -- that the TARP funds were likely and they made
4 their investment only if TARP was approved, right?

5 A Yes.

6 Q And actually you, if you wanted to, could have said I
7 want my money back, but you, because you believed in the
8 strength of the bank, agreed to keep your commitment?

9 A Yes.

10 Q And that's because at this point the bank, in spite of
11 not getting these TARP funds, was still a viable institution,
12 correct?

13 A Yes.

14 Q Now, let's talk a little bit about May of 2010, when KPMG
15 comes into play. Prior to May of 2010, had you ever heard of
16 anything called EITF 85-1?

17 A No.

18 Q And 15 years at Royal Bank, right?

19 A Yes.

20 Q You had been a CFO, right?

21 A Yes.

22 Q CFO at Nova Bank?

23 A Yes.

24 Q And you had never seen or heard of anything called EITF
25 85-1?

Colloquy

65

1 A Correct.

2 Q And the first time that you ever heard of that was when
3 Mr. Shubin at KPMG brought it up in May of 2010?

4 A Yes.

5 Q And at the time he sent to you a copy of EITF 85-1,
6 right?

7 A Yes.

8 Q And that was so you could take a look at it?

9 A Yes.

10 Q And I believe you testified on direct examination that
11 you disagreed with him that it was applicable, correct?

12 A Yes.

13 Q And Mr. Hartline also agreed with him (sic) that it was
14 -- was not applicable?

15 A Yes.

16 Q And as a result, your belief was Nova should have been
17 able to count the capital, correct?

18 A Yes.

19 Q And Mr. Hartline's belief was that Nova should have been
20 able to count the capital --

21 MS. BARRY: Objection.

22 THE COURT: Sustained.

23 BY MR. EGAN:

24 Q Did Mr. Hartline tell you that he believed that Nova
25 should have been able to count the capital?

Colloquy

66

1 A Yes.

2 Q But KPMG is your auditor, right?

3 A Yes.

4 Q And they're a big, big company, right?

5 A Yes.

6 Q And there aren't many KPMGs in the world, are there?

7 A No.

8 Q And, in fact, for a bank such as yours, to have its
9 financial statements audited, you only have a few choices,
10 correct?

11 A Yes.

12 Q Basically the big four?

13 A Yeah, it's a big four firm.

14 Q And KPMG costs a lot of money, don't they?

15 A Yes.

16 Q And they charge a lot of money to do these audits,
17 correct?

18 A Yes.

19 Q So if you wanted to get somebody on KPMG's footing to
20 disagree with KPMG, you would have to go out and hire one of
21 these other big four auditing firms, correct?

22 A Correct.

23 Q And that would have cost the bank hundreds of thousands
24 of dollars, correct?

25 A Yes.

Hanuscin - Cross (Dun)

67

1 Q And at the end of the day, even if that company disagreed
2 with KPMG's version of conclusions, that wouldn't necessarily
3 be accepted, correct?

4 A Correct.

5 MS. BARRY: Objection. Relevance.

6 THE COURT: Overruled.

7 BY MR. EGAN:

8 Q So when -- you ultimately agreed with KPMG, correct? I
9 mean, you had to, right?

10 A Yeah, we had to.

11 Q Because if you didn't, you wouldn't have had audited
12 financials?

13 A Correct.

14 Q And that would have been bad for the bank?

15 A Correct.

16 Q And it would have been bad for the shareholders?

17 A Correct.

18 Q So although you did it, you didn't really think they were
19 right?

20 A Correct.

21 MR. EGAN: I have nothing further, Your Honor.

22 MR. DUNCAN: May I inquire, Your Honor?

23 THE COURT: Yes, sir.

24 MR. DUNCAN: Thank you.

25 CROSS-EXAMINATION

Hanuscin - Cross (Dun)

68

1 BY MR. DUNCAN:

2 Q Good morning again, Mr. Hanuscin.

3 A Good morning.

4 Q Sir, the first time you were interviewed by the
5 Government about any of the events related to your testimony
6 today was back in June of 2012, correct?

7 A I believe that's correct.

8 Q That would have been about three years after the George
9 Levin loan, correct?

10 A Yes.

11 Q And the next time you were interviewed by the Government
12 was three years after that, correct?

13 A It seems to be the right time frame, yes.

14 Q And that would be almost six years after the events,
15 correct?

16 A Yes.

17 Q Sir, you were shown on -- during Mr. Egan's cross-
18 examination Defense Exhibit 134.

19 MR. DUNCAN: Could we have that up for the witness
20 again, please.

21 BY MR. DUNCAN:

22 Q Okay. The first page of that, what's that, Mr. Hanuscin?

23 A This is an email from Beth Martin to myself copied to Joe
24 Petrone.

25 Q And the date of it is November 19th, 2009, about 4:00,

Hanuscin - Cross (Dun)

69

1 correct?

2 A Yes.

3 Q And Beth Martin was working at the business center for
4 Nova, correct?

5 A Yes.

6 Q And this all relates to the \$250,000 consulting payment
7 that was made to Mr. Bekkedam in order to help the bank with
8 certain of its financial needs, correct?

9 A Yes.

10 MR. DUNCAN: And if you would, go to page 2 of that
11 agreement, or page 1 of the agreement, the second page of the
12 Defense Exhibit 134. And if you could go down to the
13 description of services, please, and blow that up for the
14 witness.

15 BY MR. DUNCAN:

16 Q Do you see that there, the description of services, Mr.
17 Hanuscin?

18 A Yes, I do.

19 Q The description of services says that the company --
20 that's the Nova Holdings, the parent company, correct?

21 A Correct.

22 Q -- they acknowledge that the consultant -- that's Mr.
23 Bekkedam, correct?

24 A Yes.

25 Q -- had for a period of years provided services to the

Hanuscin - Cross (Dun)

70

1 holding company, correct?

2 A Yes.

3 Q And during that time, Mr. Bekkedam wasn't paid for those
4 services, was he?

5 A I'm not aware.

6 Q Okay. You would agree that the last paragraph or last
7 part of the services paragraph says that the company
8 acknowledges that the consultant has provided services similar
9 to the services the company has for an extended period of time
10 prior to the date of this agreement, and that the purpose of
11 this agreement is in part to recognize and formalize the
12 relationship and compensate the consultant for such services,
13 correct?

14 A Correct.

15 Q Those are the past services, right?

16 A Yes.

17 Q This agreement was a two-year agreement, correct?

18 MR. DUNCAN: If you go down --

19 A I believe so.

20 MR. DUNCAN: -- go down to termination, 3.1. If you
21 could blow up that last little part for us, please.

22 BY MR. DUNCAN:

23 Q So the agreement is going to terminate in December 31st,
24 2011, correct?

25 A Correct.

Hanuscin - Cross (Dun)

71

1 Q And this is as of November 2009, correct?

2 A Yes.

3 Q So it's a two-year agreement, right?

4 A Yes.

5 Q So Mr. Bekkedam is being paid for his past services and
6 then his future services approximately \$125,000 a year,
7 correct?

8 A Yes.

9 Q And you testified when Mr. Egan was asking you questions
10 that banks frequently hire outside consultants to help them
11 with these things, correct?

12 A Yes.

13 Q And they hire investment bankers, correct?

14 A Yes.

15 Q And investment bankers aren't cheap, are they?

16 A No, they're not.

17 Q So you'd consider this was a good deal for the bank,
18 right?

19 A Yes, I would believe so.

20 Q And this is a corporate record of Nova Holdings Company,
21 correct?

22 A Yes.

23 Q All of your corporate holdings records are available to
24 any bank regulator that wants to see them, correct?

25 A Yes.

Hanuscin - Cross (Dun)

72

1 Q So there was nothing hidden about this, was there?

2 A No.

3 Q The person who's involved in raising or helping the bank
4 raise capital would be called like a fund raiser, would that
5 be fair? Capital raiser?

6 A Capital raiser is --

7 Q Okay.

8 A -- is more appropriate.

9 Q The person who raises capital, that's what they do, they
10 raise the capital, right?

11 A Yes.

12 Q And then the capital goes into the bank holding company,
13 correct?

14 A Yes.

15 Q And how the bank holding company classifies that capital
16 is a decision made by the bankers, the holding company,
17 correct?

18 A Yes.

19 Q So if it's tier 1 capital, and I'll -- I'll get the terms
20 wrong -- but risk-based capital, those are all decisions made
21 by the bankers, correct?

22 A Yeah. They all go into a general capital account. The
23 tiers and risk-based are calculations of that -- that balance.

24 Q The outside fund raiser like Mr. Bekkedam, he has nothing
25 to do with determining how the capital is termed, does he?

Hanuscin - Cross (Dun)

73

1 A No, he doesn't.

2 MS. BARRY: Objection.

3 THE COURT: Sustained.

4 BY MR. DUNCAN:

5 Q Did Mr. Bekkedam ever tell you how you should at the bank
6 classify your capital?

7 A No.

8 Q You testified earlier a little bit about the Delaware
9 Valley Financial Group. Do you remember that?

10 A Yes.

11 Q And you actually -- when you were hired, that was one of
12 your principal responsibilities, correct?

13 A Yes.

14 Q In late 2008, Nova was negotiating a deal to acquire that
15 insurance company, correct?

16 A Yes.

17 Q And you spent basically the first few months of your job
18 working on the proposal for acquiring the Delaware Valley
19 Financial Group, correct?

20 A Correct.

21 Q And it was taking up a lot of your time and it was
22 important because it was important to the bank, right?

23 A Yes.

24 Q Mr. Egan asked you, and I just want to just make sure
25 that we all understand this, he said that the Delaware Valley

Hanuscin - Cross (Dun)

74

1 Financial Group thing was supposed to close on June 30th,
2 correct?

3 A Yes, I believe so.

4 Q That's June 30th of 2009, correct?

5 A Yes.

6 Q About a little more than a year after you started?

7 A Yes.

8 Q So you were working on that for almost a year to try to
9 get that deal to come to completion, correct?

10 A Yes.

11 Q You understood that the bank had to be well capitalized
12 in order to get regulatory approval for Nova to acquire the
13 Delaware Valley Financial Group, correct?

14 A Yes.

15 Q And Nova's regulators were the FDIC, right?

16 A Yes.

17 Q And so you were in communication with Ms. Koch about
18 Delaware Valley Financial Group, correct?

19 A I was not responsible for the communications for the
20 approval.

21 Q Right. But you were -- you were giving her information?

22 A I would -- yeah, any information that she requested, I'd
23 provide.

24 MR. DUNCAN: Could we see Government's Exhibit 28
25 and have it published, Your Honor? It's in evidence.

Hanuscin - Cross (Dun)

75

1 THE COURT: Yes, sir.

2 MR. DUNCAN: Thank you, Your Honor. If you'd go to
3 the second page, and then the third page, please. I'm sorry,
4 just go to the third page. That's where the information shows
5 up.

6 BY MR. DUNCAN:

7 Q So this is information you're sending to Ms. Koch,
8 correct?

9 A Yes.

10 Q And it's the Delaware Valley Financial Group and it's
11 their balance sheet, right?

12 A Yes.

13 Q You're providing her this information so the FDIC, who's
14 the regulator for the bank, can understand why Nova wants to
15 acquire the bank, correct -- or acquire the company, correct?

16 A Yes.

17 MR. DUNCAN: And if we could stay with Government's
18 Exhibit 28 just for a moment. And if we could go back to the
19 first page, please.

20 BY MR. DUNCAN:

21 Q So this is an email from you, Mr. Hanuscin, to Ms. Koch,
22 correct?

23 A It's a memo.

24 Q Memo. June 2nd, 2009. But you actually sent it to Ms.
25 Koch, correct?

Hanuscin - Cross (Dun)

76

1 A Yes.

2 Q In your email, among the things you're talking about, is
3 the fact that Nova has the possibility of getting a big
4 investor, correct?

5 A Yes.

6 Q And in your memorandum to her, you specify that this
7 investment by this large investor was contingent on certain
8 events, didn't you?

9 (Pause)

10 MR. DUNCAN: If we could go down, just go down to
11 the second paragraph, please, and blow that up for the
12 witness, please.

13 BY MR. DUNCAN:

14 Q So you see that the investment is dependent upon
15 regulatory approval of the investment, correct?

16 A Yes.

17 Q And it's also contingent on the Treasury Department
18 actually granting the TARP funds to Nova, correct?

19 A Yes.

20 Q And it's also contingent on that thing that you're
21 working on, the Delaware Valley Financial Group, correct?

22 A Yes.

23 Q So there were at least three contingencies that you
24 advised the FDIC about regarding whether or not this person
25 would actually invest in Nova Bank, correct?

Hanuscin - Cross (Dun)

77

1 A Yes.

2 Q So it wasn't a sure thing, was it?

3 A No.

4 Q You regularly communicated with Ms. Koch, correct?

5 A Yes.

6 Q You never withheld any information that she asked for,
7 did -- did you?

8 A No.

9 Q But she never wrote back to you and asked you anything
10 more about this investor, did she?

11 A Not that I recall.

12 MR. DUNCAN: Could we see Government's Exhibit 75
13 and publish it, Your Honor? It's in evidence.

14 THE COURT: Yes, sir.

15 MR. DUNCAN: And if we could go down and blow up the
16 second paragraph, please.

17 BY MR. DUNCAN:

18 Q So this is the TARP letter to you, Mr. Hanuscin, correct?

19 A Yes.

20 Q And you would agree that if you look at that second
21 paragraph, the only thing the letter requires that Nova do is
22 to raise \$10 million in capital after August 25th, 2009?

23 A Yes.

24 Q And that's what you believed on August 25th, 2009, isn't
25 it?

Hanuscin - Cross (Dun)

78

1 A Yes.

2 Q And to the best of your knowledge, that was true?

3 A Yes.

4 MR. DUNCAN: Can we see Government's Exhibit 180,
5 which I believe was admitted while -- with this witness. And
6 about halfway down the page where Nova Bank is underlined, if
7 you'd blow that up for the witness, please. Can you make it a
8 little larger?

9 BY MR. DUNCAN:

10 Q Okay. So this is an email communication that you had
11 with Harold Shaw, correct?

12 A Yes.

13 Q And this was back in August of 2010, correct?

14 A Yes.

15 Q Mr. Shaw was one of the regulators at the FDIC, correct?

16 A Yes.

17 Q And you told Mr. Shaw that Nova Bank will have to amend
18 its December 2009, March 2010, and June 2009 call reports to
19 reflect the reduction of regulatory capital of \$8.3 million
20 related to the loans to existing shareholders, correct?

21 A Yes.

22 Q That's all that stuff about what KPMG told you to do,
23 right?

24 A Yes.

25 Q And you reluctantly agreed to do it, correct?

Hanuscin - Redirect (Bar)

79

1 A Yes.

2 Q So on behalf of Nova Bank, you voluntarily disclosed this
3 information and these facts to the banking regulators, didn't
4 you?

5 A Yes.

6 MR. DUNCAN: No further questions, Your Honor.
7 Thank you. Thank you, Mr. Hanuscin.

8 THE COURT: Redirect?

9 MS. BARRY: Yes, Your Honor, briefly.

10 REDIRECT EXAMINATION

11 BY MS. BARRY:

12 Q Mr. Hanuscin, you were asked if you met with the
13 Government. Do you recall that?

14 A Yes.

15 Q And did you also have an opportunity to meet with
16 representatives of the defendants?

17 A Yes.

18 Q Now, Mr. Egan asked you questions about asset quality and
19 earnings and things that the CPP council may have had
20 questions about. Do you recall that?

21 A Yes.

22 Q Do you know whether or not you could have received --
23 that Nova Bank could have received the TARP funds if it was
24 not well capitalized?

25 A No, they would not give -- provide it to banks that were

Hanuscin - Redirect (Bar)

80

1 not adequate -- or well capitalized or above.

2 Q Okay. So you --

3 A Excuse me.

4 Q -- had to be well capitalized?

5 A You had to be well capitalized, yes.

6 Q Okay. And you also -- could you acquire DVFG if the bank
7 or the holding company were not well capitalized?

8 A No, we couldn't acquire it.

9 Q So on June 30th of 2009, could you acquire DVFG?

10 A No.

11 Q Mr. Egan asked you about I think a Joe Petrone, who was
12 the comptroller?

13 A Yes.

14 Q Do you recall that? Was Mr. Petrone involved in capital
15 raising for the bank?

16 A No, he was not.

17 Q Was Mr. Petrone involved in anything related to TARP?

18 A No.

19 Q You mentioned that you had communications with Ms. Koch
20 in the beginning, and then did somebody else take over
21 communications with Ms. Koch?

22 A Yes.

23 Q And who was that?

24 A Brian.

25 Q And do you know every single time Mr. Hartline spoke with

Hanuscin - Redirect (Bar)

81

1 Ms. Koch?

2 A No.

3 Q You were asked questions by Mr. Egan on Mr. Fellheimer
4 having a line of credit. Do you know if that line of credit
5 was opened for the purpose of investing in Nova Bank or --

6 MR. EGAN: Objection. Leading.

7 MS. BARRY: Whether or not.

8 THE COURT: Overruled.

9 BY MS. BARRY:

10 Q Do you know whether or not that line of credit was opened
11 for the purpose of investing in Nova Bank?

12 A No, I do not.

13 Q Do you know whether or not that line of credit was
14 preexisting before the request was made to invest in Nova
15 Bank?

16 A I don't recall the terms or the conditions of the -- the
17 note.

18 MS. BARRY: I believe it was Government's Exhibit
19 140. I'm sorry, 145. And if we could just publish this for
20 the jury, please, again.

21 BY MS. BARRY:

22 Q Now, this was an email -- is this an email that you sent
23 to Ms. Koch?

24 A Yes.

25 Q And, again, the information that was provided in the

Hanuscin - Redirect (Bar)

82

1 email, did you prepare that personally or did you receive that
2 from someone else?

3 A I -- I received it from someone else.

4 Q And who was that someone else?

5 A I believe Brian.

6 MS. BARRY: May I approach the witness, Your Honor?

7 THE COURT: Yes.

8 BY MS. BARRY:

9 Q You were shown Defense Exhibit 134. And could you just
10 look at 134, and is that the consulting agreement between Nova
11 Holding Company and Barry Bekkedam?

12 A Yes.

13 Q Okay. And what is the date of that agreement?

14 A November 19th, 2009.

15 Q Do you know -- you said something that the Levin loan
16 should -- you agreed that it should count as capital?

17 A I'm sorry?

18 Q Did you say -- mention something to Mr. Egan that you
19 thought the Levin loan should count as capital?

20 A I -- I said that I didn't necessarily agree with KPMG's
21 position on the transaction.

22 Q Okay. At the time that the investment was made, did you
23 know that the money had been borrowed from the bank?

24 A No.

25 Q Okay. And do you know whether or not Mr. Levin's loan

Hanuscin - Recross (Ega)

83

1 was ever paid off?

2 A To the best of my knowledge, it was not.

3 Q Okay. So it was just charged off?

4 A I don't know specifically if it was charged off.

5 Q Okay. But --

6 A But during my employment, it was not -- it was not paid
7 off.

8 MS. BARRY: May I have a moment, Your Honor?

9 THE COURT: Certainly.

10 MS. BARRY: No further questions. Thank you.

11 THE COURT: Is there recross?

12 MR. EGAN: Very briefly, Your Honor.

13 If we could go back to Exhibit 145. And if we could
14 have page 36, please. Wait, stay on page 1 for a second.

15 RE CROSS-EXAMINATION

16 BY MR. EGAN:

17 Q You were asked a question on redirect when Mr. Hartline
18 took over communications with the FDIC. Do you recall that?

19 A Yes.

20 Q You were never precluded from communicating with the FDIC
21 by Mr. Hartline, were you?

22 A No.

23 Q And, in fact, this email of December 16th is from you to
24 FDIC, not from Mr. Hartline, right?

25 A Yes.

Hanuscin - Recross (Ega)

84

1 Q So he didn't stop you from doing it; he didn't take it
2 over and say don't do it anymore?

3 A No.

4 Q Okay.

5 MR. EGAN: So if we could go to page 36.

6 BY MR. EGAN:

7 Q And this is this Fellheimer credit line. The date of the
8 request to take it from the credit line is December 11th,
9 correct?

10 A Yes.

11 Q And the investment is made on December 16th, correct? If
12 you go back to page 2, you'd have to look at it, but --

13 A Okay. Yes.

14 Q So that's pretty much contemporaneously, correct?

15 A Yes.

16 MR. EGAN: And if we could go to 180, please. And
17 if we could --

18 BY MR. EGAN:

19 Q This is a document Mr. Duncan asked you some questions
20 about.

21 MR. EGAN: If we could blow up the bottom section
22 and get it out a little bit more.

23 Q Now, you were asked questions about Nova Bank amending
24 its December 2009, March 2010, and June 2009 call reports. Do
25 you remember that?

Hanuscin - Recross (Ega)

85

1 A Yes.

2 Q And those are the call reports that had to be amended
3 because of what KPMG determined, correct?

4 A Yes.

5 Q Now, the TARP was officially denied in December of 2009,
6 correct?

7 A Yes.

8 Q So none of those amended call reports could possibly have
9 been part of their discussion, could they have?

10 A No.

11 Q So the reports that were changed because of KPMG were all
12 after that, correct?

13 A Yes.

14 MR. EGAN: I have nothing further, Your Honor.

15 MR. DUNCAN: No, thank you, Your Honor.

16 MS. BARRY: No further questions, Your Honor.

17 THE COURT: All right. Thank you, sir. You may
18 step down. Watch your step, please.

19 MR. IGNALL: May I proceed, Your Honor?

20 THE COURT: Do we need to stop for lunch now or
21 shall we continue? Continue? Great. Thank you.

22 MR. IGNALL: The Government calls Thomas Patterson.
23 And, Your Honor, just for clarification, because I know where
24 might be a good time to break, with respect to the Court's
25 schedule and counsels' schedule, is there a time that would

Patterson - Direct (Ign)

86

1 make the most sense?

2 THE COURT: Did we say?

3 MR. EGAN: 12:30, Your Honor.

4 THE COURT: 12:30?

5 MR. EGAN: Yeah.

6 THE COURT: Or any -- before that or just at 12:30?

7 MR. EGAN: Five -- five minutes longer.

8 MR. IGNALL: All right. If we get close to 12:30
9 and there's a time that -- from that then is a good time to
10 break, I'll let you know, Your Honor.

11 THE COURT: That's fine. Thank you.

12 MR. EGAN: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 MR. IGNALL: If we're done, then that would be a
15 good time.

16 THE CLERK: Please raise your right hand.

17 THOMAS PATTERSON, GOVERNMENT'S WITNESS, SWORN

18 THE CLERK: Please state and spell your name to the
19 record for me, and you can have a seat.

20 THE WITNESS: Thomas Patterson, T-H-O-M-A-S, P-A-T-
21 T-E-R-S-O-N.

22 THE COURT: You may proceed.

23 MR. IGNALL: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. IGNALL:

Patterson - Direct (Ign)

87

1 Q Mr. Patterson, in what city and state do you currently
2 live?

3 A Limerick, Pennsylvania.

4 Q And what do you do for a living right now?

5 A I have two jobs. I work at a trophy place in sales and
6 marketing, and I also drive for a limousine company.

7 Q And prior to the jobs you have now, did you ever work in
8 the banking industry?

9 A Yes, I did.

10 Q And for how long did you work in banking?

11 A Basically from 1973 till 2010.

12 Q And do you have a bachelor's degree?

13 A Yes, I do.

14 Q And where did you get that degree?

15 A St. Joseph's University.

16 Q And what was your degree in?

17 A Finance.

18 Q And while you were working in banking, were you ever --
19 did you ever work for a bank called Nova Bank?

20 A Yes, I did.

21 Q And when did you work for Nova Bank?

22 A 2006 till 2010.

23 Q And what was your job that you were hired to do at Nova
24 Bank?

25 A Senior loan officer.

Patterson - Direct (Ign)

88

1 Q And what did that mean?

2 A Generating loans for the bank and overseeing a staff of
3 lenders.

4 Q And what does it mean to generate loans?

5 A To go out and seek customers who wanted to borrow money
6 from the bank.

7 Q And who hired you at Nova Bank?

8 A Mr. Hartline.

9 Q And what is Mr. Hartline's first name?

10 A Brian.

11 Q Do you see him here in court today?

12 A Yes.

13 Q And can you identify him where -- by where he's sitting
14 and what he's wearing?

15 A He's wearing a tie, white shirt, blue blazer.

16 Q And where is he sitting because it --

17 A Right there.

18 Q Can you tell -- just for the record --

19 MR. EGAN: Your Honor, we'd -- we'd stipulate --

20 MR. IGNALL: Okay.

21 MR. EGAN: -- that he's identified Mr. Hartline.

22 THE COURT: Thank you.

23 BY MR. IGNALL:

24 Q And when you were the senior loan officer, to whom did
25 you report at Nova Bank?

Patterson - Direct (Ign)

89

1 A Mr. Hartline.

2 Q And when did you leave the bank?

3 A 2010. I believe it was August.

4 Q All right. Have you been charged with a crime related to
5 your time at the bank?

6 A Yes, I was.

7 Q And what crime were you charged with?

8 A Misuse of bank funds.

9 Q And what did that -- what does that mean, misuse of bank
10 funds?

11 A I basically used bank funds to deposit into a borrower's
12 account while I was working on doing a loan to replace those
13 funds.

14 Q And did you plead guilty to that crime?

15 A Yes, I did.

16 Q And in what court did you plead guilty?

17 A The Federal Court, Pennsylvania.

18 Q Here -- was it here in Philadelphia?

19 A Yes, it was.

20 Q And roughly when did you plead guilty?

21 A January, I guess, 2011.

22 Q All right. And did you have a plea agreement with the
23 Government?

24 A Yes, I did.

25 Q And did you personally profit from the crime you pleaded

Patterson - Direct (Ign)

90

1 guilty to?

2 A No, I did not.

3 Q And did you have a plea agreement with the Government? I
4 think I asked you that.

5 A Yes.

6 MR. IGNALL: Just for the witness, if we could bring
7 up Exhibit 199.

8 BY MR. IGNALL:

9 Q Now, as part of that plea agreement, did you have any
10 obligation to cooperate with the Government?

11 A I agreed to cooperate with the Government.

12 Q Was that part of your plea agreement?

13 MR. IGNALL: May I -- may I approach with a hard
14 copy, Your Honor?

15 THE COURT: Yes, sir.

16 MR. IGNALL: It's a multi-page document. It might
17 be easier to do it that way.

18 (Pause)

19 MR. IGNALL: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 BY MR. IGNALL:

22 Q If you could flip through that and see if that refreshes
23 your recollection about whether your plea agreement contained
24 an agreement to cooperate.

25 (Pause)

Patterson - Direct (Ign)

91

1 A No, it does not.

2 Q All right. Did you agree to cooperate, even though it's
3 not in your plea agreement?

4 A Yes.

5 Q And did you cooperate with the Government?

6 A Yes, I did.

7 Q And did you cooperate with the Government in the
8 investigation of this case?

9 A Yes, I did.

10 Q All right. Have you been sentenced for your crime?

11 A Yes, I was.

12 Q And when were you sentenced?

13 A This January -- no, I went -- November 2011, I believe.

14 Q Do you remember if the Government made a recommendation
15 for a reduced sentence because of your cooperation?

16 A Yes, they did.

17 Q And what sentence did you receive?

18 A I received eight months.

19 Q And have you served that sentence yet?

20 A Yes, I have.

21 Q As you testify here today, are you hoping for any
22 benefit?

23 A No.

24 Q Have you been subpoenaed to testify here today?

25 A Yes, I have.

Patterson - Direct (Ign)

92

1 Q When you worked at Nova Bank, how many people worked for
2 you approximately?

3 A Approximately 10.

4 Q And what did these individuals do?

5 A They were lenders that generated loans for the bank, went
6 out and found customers that wanted to borrow money.

7 Q And were there any particular type of customers the
8 lending department was looking for?

9 A Just business customers looking for business loans.

10 Q All right. Were you involved in deciding whether a
11 customer who applied for a loan was creditworthy? Was that
12 part of your department?

13 A That was the credit department that underwrote the loan.

14 Q And what does it mean to underwrite the loan?

15 A The credit department would do a write-up for the loan,
16 take into account credit, credit history, ability to pay,
17 those types of things.

18 Q Did you have any involvement in approving loans?

19 A I was part of loan committee which approved loans, yes.

20 Q And what did that mean, to be part of the loan committee?

21 A There were five people on loan committee, and loans went
22 to loan committee to be approved.

23 Q Starting around 2008 or so, did you have any
24 understanding of whether Nova Bank had applied for TARP
25 funding?

Patterson - Direct (Ign)

93

1 A Yes.

2 Q Were you at all involved in the TARP application?

3 A No.

4 Q Did you have any understanding about whether there were
5 any contingencies that -- or conditions that Nova had to meet
6 to get the funding?

7 A My understanding was that the bank had been approved for
8 TARP pending the ability to raise capital.

9 Q And do you know anything more specific than that?

10 A No.

11 Q Okay. While you were at the bank, were you aware of
12 anyone at the bank or the holding company trying to raise
13 capital?

14 A Yes.

15 Q Was that common, uncommon?

16 A No, it was common.

17 Q All right. Did anyone ever ask you to invest?

18 A Yes.

19 Q Who asked you?

20 A Mr. Hartline.

21 Q Do you know someone named Barry Bekkedam?

22 A Yes, I do.

23 Q And how do you know Mr. Bekkedam?

24 A Mr. Bekkedam was chairman of the holding company when I
25 went to work for the bank.

Patterson - Direct (Ign)

94

1 Q Was he the chairman of the holding company the whole time
2 you worked at the bank?

3 A No.

4 Q All right. Do you know if Mr. Bekkedam had a business
5 other than being the chairman of the holding company?

6 A Yes.

7 Q And what was the name of that business?

8 A Ballamor Capital Management.

9 Q And do you know what that business was?

10 A It managed the funds of wealthy people or investment for
11 wealthy people.

12 Q Do you know if any Ballamor clients were ever clients of
13 Nova Bank while you were there?

14 A Yes.

15 Q And do you know if any of those Ballamor clients ever
16 borrowed money from the bank?

17 A Yes, they did.

18 Q And if a Ballamor client sought a loan, did you treat
19 that -- was that processed in any way differently?

20 A No. I mean --

21 Q Let me ask -- let me rephrase that. I think I asked that
22 poorly.

23 MR. EGAN: May the witness be allowed to answer the
24 question, Your Honor?

25 THE COURT: He did.

Patterson - Direct (Ign)

95

1 MR. IGNALL: I think he did.

2 BY MR. IGNALL:

3 Q Let me rephrase that. Did loans to Ballamor clients come
4 in from a source that might be different from other loans?

5 A Well, typically they came in through someone at Ballamor
6 who referred the customer to the bank for a loan.

7 Q Okay. Did loans to Ballamor customers often come through
8 your staff?

9 A No.

10 Q Did you ever talk to Mr. Hartline about Ballamor clients
11 getting loans from the bank?

12 A Yes.

13 Q Do you remember anyone named George Levin?

14 A Yes.

15 Q And who was Mr. Levin?

16 A Mr. Levin was a customer who was introduced to the bank
17 by Mr. Bekkedam. My understanding was he was going to be an
18 investor in the bank.

19 Q All right. Did you ever see Mr. Levin at the bank?

20 A Yes.

21 Q And approximately what year did you first learn of Mr.
22 Levin being a bank customer?

23 A 2009.

24 Q All right. Let me show you a document --

25 MR. IGNALL: Let's -- Exhibit 15, which I believe is

Patterson - Direct (Ign)

96

1 already in evidence.

2 BY MR. IGNALL:

3 Q Do you recognize Exhibit 15, and in particular if we look
4 down at the second email there?

5 A Yes.

6 Q And what is Exhibit 15, that email that we're looking at
7 right now?

8 A It's an email from Mr. Hartline to Mr. Bekkedam, cc'd
9 myself and Mark Poliski.

10 Q And what's this email about?

11 A It's about Mr. Levin assuming a loan of Mr. Bekkedam's.

12 Q All right. And were you at all involved in that?

13 A I don't -- I guess -- I don't remember.

14 Q Do you remember if Mr. Levin ever actually assumed that
15 loan?

16 A I don't know.

17 Q Do you know whether -- did you ever have a discussion
18 with anyone about whether Mr. Levin was going to invest in the
19 bank or more specifically the holding company?

20 A Yes. My understanding was he was going to invest. The
21 bank was seeking approval because his investment was --

22 Q Well, let --

23 A Oh, okay.

24 Q Let me --

25 A Okay.

Patterson - Direct (Ign)

97

1 Q -- stop you.

2 A Okay.

3 Q Did you speak to anyone about that, or had -- from whom
4 did you first learn that Mr. Levin was going to invest?

5 A Mr. Hartline.

6 Q All right. And what did Mr. Hartline tell you?

7 A That Mr. Levin was going to invest in -- in the bank.

8 Q And did Mr. Hartline tell you how much?

9 A I want to -- I want to say 15 million comes to mind.

10 Q All right. And did Mr. Hartline tell you who brought Mr.
11 Levin to the bank as a possible investor?

12 A Mr. Bekkedam.

13 Q Let's go to June of 2009. Do you know if up to that
14 point Mr. Levin had made any investment in Nova or the holding
15 company?

16 A My understanding is no, he had not.

17 Q And just so we're clear, was his investment going to be
18 in the holding company, in the bank; do you understand how
19 that was going to work?

20 A I believe it was the holding company.

21 Q All right. At some point in June, did you have a
22 conversation with anyone at Nova Bank about lending money to
23 Mr. Levin?

24 A Yes.

25 Q Who did you first talk to about that?

Patterson - Direct (Ign)

98

1 A Mr. Hartline.

2 Q And what did Mr. Hartline say?

3 A That Mr. Levin needed a loan.

4 Q And did Mr. Hartline say what the purpose of the loan
5 was?

6 A It was for investment in the bank, investment of capital
7 in the bank.

8 Q And what do you mean investment of capital in the bank?

9 A He was going to invest -- well, in the holding company.

10 Q Do you know whether you were involved in any efforts to
11 get Mr. Levin a loan from a different bank?

12 A I believe we tried to participate it or maybe even farm
13 it out to a different bank.

14 Q What does participate mean?

15 A A partner.

16 Q And if I could turn your attention to Exhibit 23, --

17 MR. IGNALL: And I do not believe this is in
18 evidence yet.

19 Q -- do you recognize Exhibit 23?

20 A Yes.

21 Q What is Exhibit 23?

22 A It's asking us to look into finding a participant for a
23 loan.

24 Q Well, let -- what -- is it a -- what type of document is
25 this?

Patterson - Direct (Ign)

99

1 A It's a memo from Mr. Hartline.

2 Q To whom?

3 A To Larry Rovin at Ballamor Capital.

4 Q And is anyone copied on this?

5 A Copied to Kim Hartline and myself.

6 Q All right. And what's the date of this memo?

7 A May 27th, 2009.

8 MR. IGNALL: The Government moves into evidence
9 Exhibit 23.

10 MR. DUNCAN: No objection.

11 MR. EGAN: No objection.

12 THE COURT: Admitted.

13 MR. IGNALL: May it be published to the jury, Your
14 Honor?

15 THE COURT: Yes, sir.

16 BY MR. IGNALL:

17 Q All right. And can you read the first paragraph of this
18 email from Mr. Hartline to Mr. Rovin?

19 A "Barry would like Nova to look into participating a loan
20 for Banyon. Can you please send me the documents that explain
21 the deal so I can show it to other banks and we can perform
22 due diligence."

23 Q And were you at all involved in this process?

24 A I believe I contacted the Atlantic Central Banker's Bank
25 to see if they wanted to participate.

Patterson - Direct (Ign)

100

1 Q I may come back to this, but let me show you to -- turn
2 your attention to Exhibit 24.

3 MR. IGNALL: Just for the witness, at this point.

4 BY MR. IGNALL:

5 Q Do you recognize Exhibit 24? And take a moment to look
6 at it.

7 (Pause)

8 A It's a memo from --

9 Q Let's go to the bottom email.

10 A Okay.

11 Q Do you recognize that?

12 A It's a memo from myself to Mr. Hartline.

13 Q And what's the date of that?

14 A May 27th, 2009.

15 MR. IGNALL: The Government moves into evidence
16 Exhibit 24.

17 MR. ENGLE: No objection.

18 MR. EGAN: No objection.

19 THE COURT: Granted.

20 MR. IGNALL: And may this be published to the jury?

21 THE COURT: Yes, sir.

22 BY MR. IGNALL:

23 Q What is this memo about -- the email about?

24 A It's a request to Atlantic Central Banker's Bank.

25 Q And you just -- is that the bank you mentioned a moment

Patterson - Direct (Ign)

101

1 ago?

2 A Yes, it is.

3 Q And what type of bank was Atlantic Central Banker's Bank?

4 A It's a conglomerate of banks. They're headquartered out
5 in Harrisburg. They have member banks that belong to the
6 Atlantic Central Banker's Bank.

7 Q And why was -- why were you talking about getting a loan
8 from ACBB for Mr. Levin?

9 A They have the ability to piece the loan out to various
10 banks who would be interested in taking a piece of the loan.

11 MR. IGNALL: Let me go back to Exhibit 23, please.

12 Q Can you read the second paragraph, please?

13 A "FYI, Barry is looking for Mr. Levin to invest 15 million
14 into Nova, which will make him 16.5 percent investor and he
15 needs to get approval from the Fed and state."

16 Q Okay. That -- thank you. And then what does the third
17 paragraph say?

18 A "We are working on getting a loan to finance a half of
19 this purchase from the ACBB. Tom is working on that as we
20 speak and will contact you if we need anything."

21 Q By the middle to the end of June, do you recall whether
22 ACBB had agreed to loan any money to Mr. Levin?

23 A No, they did not.

24 Q So again to June, do you recall if Mr. Levin applied for
25 a loan after your conversation with Mr. Hartline?

Patterson - Direct (Ign)

102

1 A At the -- at the very end of June.

2 Q All right. And do you remember if there was any time
3 constraint on getting this loan approved?

4 A My understanding was that the loan needed to be in place
5 by June 30th.

6 Q And as of June 30th, had you had any conversations with
7 Mr. Hartline about anything the bank needed to do to qualify
8 for TARP?

9 A No, just that we need to raise -- we needed to raise --
10 the bank needed to raise capital to qualify for TARP.

11 Q And had you had that conversation with Mr. Hartline prior
12 to the end of June?

13 A Yes, it was an ongoing conversation.

14 Q Do you recall how much this loan was going to be for in
15 June for Mr. Levin?

16 A \$5 million.

17 Q And in your experience at the bank, do you recall any
18 loans bigger than that to an individual?

19 A No, I do not.

20 Q And do you remember how quickly the bank turned around
21 the loan from when it got the application?

22 A That day.

23 Q Do you know if there was any collateral or any security
24 with --

25 A No.

Patterson - Direct (Ign)

103

1 Q -- with respect to Mr. Levin's loan?

2 A The loan was unsecured.

3 Q Was that unusual for a loan of that size in your
4 experience at the bank?

5 A For a loan that size.

6 Q And if I could turn your attention to Exhibit 40A, which
7 I believe is already in evidence, were you involved in any
8 email exchanges at the end of June regarding Mr. Levin's loan?

9 A I'm sure I was.

10 Q And if we look at Exhibit 40A, do you recognize this
11 email, and start at the top. Are you included on that email?

12 A It's from Brian to Frank Preve, Larry Rovin -- yes, I am
13 cc'd on it.

14 Q And that tpatterson@novabank.com, was that your email
15 address in June of 2009?

16 A Yes, it is.

17 Q What does the first line say?

18 A "We will need these executed and returned to Nova
19 tomorrow. Scanned images will work. The plan is to fund by
20 the end of day."

21 Q And what time of day is this email from Mr. Hartline?

22 A 4:16 p.m.

23 Q If I could turn your attention to Exhibit 40B.

24 MR. IGNALL: Which I believe is also in evidence,
25 Your Honor. May I publish this to the jury, Your Honor?

Patterson - Direct (Ign)

104

1 THE COURT: Yes, sir.

2 BY MR. IGNALL:

3 Q And do you know who fpreve@aol.com is or was?

4 A He worked with -- my understanding is he worked with Mr.
5 Levin.

6 Q And did you have email correspondence with Mr. Preve?

7 A Yes.

8 Q All right. And, in fact, did you get this email that we
9 have as 40B?

10 A Yes.

11 Q And what time did you get that email?

12 A June 29th at 4:32 p.m.

13 Q And do you remember any correspondence with Mr. Preve
14 about whether documents, as part of Mr. Levin's application,
15 had to be notarized?

16 A I don't believe they were.

17 Q And do you recall why they didn't have to be notarized?

18 A No.

19 Q If I could turn your attention to Exhibit 40C --

20 MR. IGNALL: Which I also believe is in evidence.

21 May this be published to the jury?

22 THE COURT: Yes, sir.

23 MR. EGAN: No objection.

24 MR. ENGLE: No objection.

25 BY MR. IGNALL:

Patterson - Direct (Ign)

105

1 Q And this appears to be an email, June 29th, from Mr.
2 Hartline to a number of people cc'ing you. Do you see that?

3 A Yes.

4 Q Do you recall whether Mr. Hartline said anything about
5 why the documents did or did not have to be notarized?

6 A No, I do not.

7 Q What does Mr. Preve say in the previous email?

8 A "Does anything have to be notarized?"

9 Q And how does Mr. Hartline respond?

10 A "No, we are doing a loan on an unsecured basis."

11 Q Now, did anyone tell you about a date by which this loan
12 had to be approved?

13 A My understanding was June 30th.

14 Q And who told you that?

15 A Mr. Hartline.

16 Q Did Mr. Hartline say why?

17 A That was the date that we needed to have the capital
18 raised in order to qualify for TARP.

19 Q You mentioned earlier a loan committee. Do you know how
20 often the loan committee met?

21 A Once a week, is my --

22 Q Do you remember what day of the week that was generally?

23 A No, I don't.

24 Q All right. Let me show you what we've marked as Exhibit
25 41, which I believe is in evidence. Do you recall if there

Patterson - Direct (Ign)

106

1 was a loan committee on June 30th?

2 A According to this document, there was.

3 Q And were you present at the loan committee meeting on
4 June 30th?

5 A Yes.

6 Q And this is the day after those emails we just talked
7 about. So do you recall if you were at a loan committee
8 meeting the next day?

9 A Yes.

10 Q And do you recall roughly when the meeting took place?

11 A When?

12 Q Yeah. What time of day?

13 A The meeting was called to order at 9:45 a.m.

14 Q Is that consistent with your recollection of when a loan
15 committee meeting --

16 A Yes.

17 Q -- was often held?

18 A Um-hmm.

19 Q And with respect to Mr. Levin's loan, do you recall
20 whether that loan came up at the loan committee?

21 A I don't believe it did.

22 Q Was there another way to get loans approved other than
23 going to a loan committee meeting -- loan committee meeting?

24 A Yes.

25 Q And what was that?

Patterson - Direct (Ign)

107

1 A You could walk them around to the individual loan
2 committee members to seek their approval.

3 Q And were these the loan committee members who were
4 present at the meeting?

5 A Yes, they're loan committee members.

6 Q And with respect to Mr. Levin's loan, did you do the
7 physical walking around?

8 A I believe I did.

9 Q All right. And did you do that after the loan committee
10 met on June 30th?

11 A Yes.

12 Q And do you recall how long -- and let me ask a follow-up
13 before I get to that. For loans that were walked around, did
14 any document go to the loan committee later to reflect such a
15 loan?

16 A I believe they were generally written into the minutes
17 afterwards.

18 Q And was that after the loan had already been approved?

19 A Yes.

20 Q With respect to Mr. Levin's loan on June 30th, do you
21 recall how long -- let me change that. Do you recall when it
22 was you walked that loan around to members of the loan
23 committee?

24 A The exact time, no, I don't.

25 Q But do you recall if it was after the loan committee

Patterson - Direct (Ign)

108

1 meeting?

2 A Yes.

3 Q Let me turn your attention to Exhibit 42, which I also
4 believe is in evidence. Do you recognize Exhibit 42?

5 A Yes.

6 Q And what is Exhibit 42?

7 A It's a memo from myself to Frank Preve.

8 Q And what is this about?

9 A It's about a wire transfer of the loan proceeds.

10 MR. IGNALL: And may this be published to the jury,
11 Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. IGNALL:

14 Q And do you recall sending this email to Mr. Preve?

15 A I'm sure I did.

16 Q But do you remember sending the email to Mr. Preve about
17 the wiring of funds?

18 A Yes.

19 Q All right. And what's the time of this email?

20 A 11:15 a.m.

21 Q And what did you tell Mr. Preve at 11:15 a.m. on June
22 30th?

23 A "I'm going to wire the funds now. Can you then wire the
24 funds back to," and it gives wiring instructions.

25 Q So as of 11:15 a.m., had you walked the loan around to

Patterson - Direct (Ign)

109

1 the loan committee members?

2 A Yes.

3 Q So had the loan committee members approved the loan as of
4 11:15 a.m.?

5 A Yes.

6 Q All right. If we can go back to Exhibit 41 and look at
7 the bottom. At what time did the loan committee meeting
8 adjourn?

9 A 10:15.

10 Q When you walked the loan around to the members of the
11 loan committee, did you discuss with them the purpose of the
12 loan as you understood it?

13 A Yes, I believe so.

14 Q Do you have a specific recollection of whether --

15 MR. EGAN: Objection.

16 THE COURT: Just a moment, please. The objection is
17 sustained, but you can ask the follow-up question.

18 MR. IGNALL: Okay.

19 BY MR. IGNALL:

20 Q Do you have a specific recollection, one way or the
21 other, about whether you discussed the purpose of the loan?

22 A No, I don't.

23 Q And if we could turn you to Exhibit 43, I believe. Do
24 you recognize Exhibit 43?

25 A It's a risk assessment summary.

Patterson - Direct (Ign)

110

1 Q And what is a risk assessment summary?

2 A It's basically the credit department does a write-up for
3 each loan. This -- so this is a risk assessment summary for
4 Mr. Levin's loan.

5 Q And does it say what the purpose of the loan is there?

6 A Financial investment.

7 Q If we can go to the last page, what is the last page?

8 A It's the signature page for the approvals.

9 Q And did you physically get those individuals on this page
10 to sign the document?

11 A Yes.

12 Q And is your signature one of the signatures there?

13 A Yes, it is.

14 Q Let me turn your attention back to Exhibit 42. Why were
15 you wiring funds to Mr. Preve?

16 A We were not wiring to Mr. Preve.

17 Q Or, I'm sorry, why were you telling Mr. Preve you were
18 about to wire funds?

19 A Because that was the instructions, to wire the funds to
20 Mr. Levin.

21 Q And what funds were you wiring?

22 A The loan proceeds.

23 MR. IGNALL: May I have one moment, Your Honor?

24 THE COURT: Yes, sir.

25 (Pause)

Patterson - Direct (Ign)

111

1 BY MR. IGNALL:

2 Q If I could turn your attention to Exhibit 46 -- I'm
3 sorry, if I could turn your attention to Exhibit 46, I
4 believe.

5 MR. IGNALL: And I believe this is in evidence. May
6 it be published to the jury, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. IGNALL:

9 Q All right. Do you see an email -- do you recognize these
10 emails, Mr. Patterson?

11 A It's an email from Mr. Preve to myself.

12 Q All right. And if you go below it, do you see an email
13 from you to Mr. Preve?

14 A Yes.

15 Q And what is -- what's the time and date of that email?

16 A Tuesday, June 30th, 11:12 a.m.

17 MR. IGNALL: I'm sorry, if we go up to the top line.
18 If we -- if we scroll down a little bit. I think the -- can
19 we scroll down?

20 BY MR. IGNALL:

21 Q Let's look at the bottom of the email. It's an email
22 from Mr. Preve, --

23 A Preve to myself.

24 Q -- do you see that?

25 A Yes.

Patterson - Direct (Ign)

112

1 Q What's the time of day?

2 A 11:12 a.m.

3 Q And what is -- what information, if any, is Mr. Preve
4 giving you in this email?

5 A The bank wire info.

6 Q All right. And then did you write back to him based on
7 the information you had gotten?

8 MR. IGNALL: Let's look at the next email forward.

9 (Pause)

10 A Okay.

11 Q And what -- what did you tell Mr. Preve, and at what time
12 do you think this was? Compound question. What was -- what
13 was the time of this email?

14 A 12:04.

15 Q So at 12:04, what did you tell Mr. Preve?

16 A "The wire has been sent and should be at Gibraltar. The
17 confirmation number is. Please let me know when the funds
18 have been wired back."

19 MR. IGNALL: And if we go to the top email.

20 Q And what does the top email -- what's the time of the top
21 email?

22 A 1:31.

23 Q And what does Mr. Preve tell you at 1:31?

24 A "Got it. Sending back in five minutes."

25 Q And why did you instruct Mr. Preve to send -- send it

Patterson - Direct (Ign)

113

1 back?

2 A My understanding was the loan proceeds were coming back
3 to the bank.

4 Q For what purpose?

5 A Capital investment.

6 Q Was this common at Nova Bank to have loan proceeds be
7 wired out to an account and then wired back to the bank?

8 A No, I wouldn't say it was common.

9 Q Had you seen it at any other time at Nova Bank?

10 A No, I don't believe so.

11 Q And in terms of funds being wired out from the bank and
12 back to the bank on the same day, had you seen that at any
13 other bank where you worked?

14 A No.

15 Q And who instructed you to wire the funds to Mr. Preve?

16 A The borrower gave us wiring instructions.

17 Q But who instructed -- did anyone at the bank instruct you
18 to wire the money to the borrower to have it wired back?

19 MR. EGAN: Objection.

20 THE COURT: Overruled.

21 A Mr. Hartline.

22 MR. IGNALL: Your Honor, if this is a good time? I
23 can go for a few more minutes or I can --

24 THE COURT: No, this is a good time, I think.

25 MR. IGNALL: Okay. All right.

Colloquy

114

1 THE COURT: All right. We're going to recess for
2 lunch. We're going to reconvene this afternoon at 1:45. 1:45
3 this afternoon.

4 Now, a couple of announcements. In deference to the
5 fact that you have been so diligent about being good and loyal
6 jurors, I'm going to give you the day off on Friday, April
7 15th, just in case somebody needs to do anything at the last
8 minute. I'm also going to have court on Monday, April 18th,
9 only in the morning. You'll be off on Monday afternoon, April
10 18th. And, lastly, Friday, April 22nd, there will be no
11 court. All right. Enjoy your lunch. Thank you.

12 THE CLERK: All rise.

13 (Jury out at 12:15 p.m.)

14 THE COURT: Sir, you may step down. Watch your
15 step, please. Counsel, let me remind you about the need to
16 get those jury instructions in as soon as you can, please, if
17 you haven't already.

18 MR. EGAN: Your Honor, I --

19 MR. IGNALL: I believe we did.

20 MR. EGAN: Yeah, I think we're at a point where
21 there are just some disputed ones that we'll need to go over
22 with the Court.

23 THE COURT: All right. All right. Fair enough.

24 MR. IGNALL: And I believe we may have done it in
25 October, I believe, Your Honor.

Colloquy

115

1 THE COURT: Okay. Good enough. All right. Enjoy
2 your lunch. Thank you.

3 MR. EGAN: Thank you, Your Honor.

4 MR. IGNALL: Thank you, Your Honor.

5 (Luncheon recess at 12:16 p.m. to 1:56 p.m.)

6 MR. EGAN: This morning, at about a half hour before
7 the end of the morning session, one of my client's character
8 witnesses came down and came into the courtroom. I didn't --
9 I didn't even recognize him. He's only a character witness.
10 The Government has asked that he be sequestered. In my
11 experience, it's not required of character witnesses, but I
12 just bring it to the Court's attention.

13 THE COURT: I've never sequestered a character
14 witness because no one's ever said anything about a character
15 witness.

16 MR. IGNALL: That's fine, Your Honor.

17 THE COURT: Because the testimony isn't going to
18 affect their reputation evidence or opinion.

19 MR. IGNALL: If that's the Court's pleasure, that's
20 fine with us, Your Honor.

21 THE COURT: All right.

22 MR. EGAN: Thank you, Your Honor.

23 THE COURT: And that goes -- well, any time that --
24 that's not an issue. All right. Thank you.

25 MR. IGNALL: All right. Can we get the witness as

Colloquy

116

1 well?

2 THE COURT: Please. Thank you.

3 (Pause)

4 THE COURT: I would not allow a question of, "Now
5 you heard what was said from the witness stand, so therefore
6 does that change anything?" I wouldn't allow that.

7 MR. EGAN: Understood, Your Honor.

8 MR. IGNALL: Okay. Well, may we approach at sidebar
9 on that, Your Honor?

10 THE COURT: Sure.

11 (Sidebar begins)

12 MR. IGNALL: I don't know if this witness is going
13 to be a reputation or opinion character witness, but they're
14 different permissible areas of cross-examination, obviously,
15 some of it could involve asking about the facts of this case.

16 MR. EGAN: Well, I do not intend that whatsoever,
17 Your Honor. You know people in (inaudible) reputation for
18 being law binding and truthful.

19 MR. IGNALL: Dates and reputation as opposed --

20 MR. EGAN: Yeah.

21 MR. IGNALL: -- to opinion? Okay. Thank you.

22 THE COURT: Thank you.

23 (Sidebar ends)

24 (Pause)

25 THE CLERK: All rise.

Patterson - Direct (Ign)

117

1 (Jury in at 2:00 p.m.)

2 THE CLERK: Ladies and gentlemen, we are back on the
3 record.

4 THE COURT: Good afternoon. You may be seated.
5 Counsel, you may continue.

6 MR. IGNALL: Thank you, Your Honor.

7 DIRECT EXAMINATION (cont.)

8 BY MR. IGNALL:

9 Q All right. Mr. Patterson, I'd like to bring your
10 attention back to the loan to Mr. Levin that we were talking
11 about before lunch. And I'd like to ask you to look at
12 Exhibit 119 on your screen, which I do not believe is in
13 evidence yet. Do you recognize Exhibit 119?

14 A Yes.

15 Q And what is Exhibit 119?

16 A It's a disbursement request and authorization form.

17 Q And what is a disbursement request and authorization?

18 A It basically instructs us what to do with the --

19 THE COURT: Could you keep your voice up higher,
20 please?

21 THE WITNESS: Yes.

22 A It instructs us what to do with the proceeds of the loan.

23 Q All right. And whose loan does this involve?

24 A George Levin.

25 MR. IGNALL: All right. The Government moves into

Patterson - Direct (Ign)

118

1 evidence Exhibit 119.

2 MR. EGAN: No objection.

3 MR. ENGLE: No objection.

4 THE COURT: Granted.

5 BY MR. IGNALL:

6 Q All right. And if we look at Exhibit 119, what's the
7 principal amount of this loan?

8 A \$5 million.

9 Q And what's the date of the loan?

10 A 7/1/2010. Oh, that's the maturity. I'm sorry.
11 6/30/2009.

12 Q Okay. And if we go down to disbursement instructions,
13 what are the disbursement instructions, kind of in the middle
14 of the page?

15 A \$5 million outgoing wire.

16 Q And if we look at above that, primary purpose of loan, do
17 you see what it says? It says the primary purpose of the loan
18 is. What does it say there?

19 A Business, including real estate investment.

20 Q At this time, what did you understand Mr. Levin's loan
21 was going to be used for?

22 A To invest in the capital of Nova Financial Holdings.

23 Q All right. If I could turn your attention back to
24 Exhibit 43. And what is -- again is Exhibit 43?

25 A It's a risk assessment summary.

Patterson - Direct (Ign)

119

1 Q And is that a document you reviewed prior to signing off
2 on Mr. Levin's loan?

3 A Yes.

4 Q All right. Do you know -- are you familiar with how that
5 document was prepared at Nova Bank?

6 A It's prepared by the credit department.

7 Q And do you know who in the credit department prepared
8 this document?

9 A It says J. Madiany.

10 Q Do you know who that is?

11 A Yes, he was a credit officer at the bank.

12 Q And what was his first name, do you remember?

13 A Joseph.

14 Q All right. And do you know if that's a document that
15 other people at the bank could access?

16 A Yes.

17 Q Let me turn your attention to Exhibit 118.

18 MR. IGNALL: Which I believe is in evidence.

19 AGENT BOYER: Yes.

20 MR. IGNALL: And may we publish this to the jury,
21 Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. IGNALL:

24 Q Do you recognize Exhibit 118?

25 MR. IGNALL: You might want to scroll up a little

Patterson - Direct (Ign)

120

- 1 bit, Agent Boyer.
- 2 A Yes.
- 3 Q What is Exhibit 118?
- 4 A It's an email from Mr. Madiany to myself.
- 5 Q And what -- is it including anything or providing
- 6 anything to you?
- 7 A It says: "Per your request, the RAS. Thanks."
- 8 Q Do you recall requesting a RAS from Mr. Madiany on or
- 9 about October 8th of 2009? -- October 6th, I'm sorry.
- 10 A Not off the top of my head, no.
- 11 Q All right. But if we can go to the next page, do you see
- 12 what -- what this RAS is, for whose loan that is?
- 13 A It's Mr. Levin's loan.
- 14 Q All right. And is this the same amount as the loan that
- 15 you talked about earlier?
- 16 A Yes, it is.
- 17 Q And what's the date of this RAS? Towards the top.
- 18 A It says revision date, 6/30/09.
- 19 Q And if we go to about halfway down to the purpose, what
- 20 does it say?
- 21 A Bridge loan for improvements to property.
- 22 Q Do you recall ever reviewing a loan to Mr. Levin for a
- 23 bridge loan for improvements to property?
- 24 A No.
- 25 Q Do you recall ever asking anyone to change a risk

Patterson - Direct (Ign)

121

1 assessment summary to reflect the loan to Mr. Levin for a
2 bridge loan for improvements to property?

3 A I don't remember.

4 Q Do you remember Mr. Levin ever applying for a loan, for a
5 bridge loan for improvements to property?

6 A No.

7 Q Was Mr. Levin's property ever a discussion back in June
8 of 2009 when you were approving his loan?

9 A No, I don't believe so.

10 Q Do you know any reason why the bank would have two
11 different risk assessment summaries?

12 MR. EGAN: Objection.

13 THE COURT: Sustained.

14 BY MR. IGNALL:

15 Q Are you -- in your experience at the bank, were you
16 familiar with any time when there were two risk assessment
17 summaries for the same loan?

18 A No.

19 Q If -- in your experience at the bank, if there were a
20 change in terms of a loan, would there be a new risk
21 assessment summary or a change in the old one or neither?

22 MR. EGAN: Objection.

23 THE COURT: Overruled.

24 A There would be a new risk assessment done.

25 Q Do you recall ever making a change to the risk assessment

Patterson - Direct (Ign)

122

1 summary for Mr. Levin?

2 A No.

3 Q All right. Now I'd like to turn your attention to
4 Exhibit 301.

5 MR. IGNALL: Which I believe is already in evidence.
6 And may I approach, Your Honor? I think it's easier with a
7 hard copy.

8 THE COURT: Yes, sir.

9 BY MR. IGNALL:

10 Q Do you recognize Exhibit 301?

11 A It's a loan checklist.

12 Q Well, just -- you can look at the hard copy that I put in
13 front of you.

14 A Okay.

15 Q Just flip through it. Do you know generally what that
16 is?

17 A It's a checklist and the documents.

18 Q Is that the type of document maintained by Nova Bank?

19 A Yes.

20 Q All right. Let me turn your attention and see how
21 (inaudible), on the page that starts 32014. Put Agent Boyer's
22 math skills to the test here.

23 MR. IGNALL: And may it be published to the jury,
24 Your Honor?

25 THE COURT: Yes, sir.

Patterson - Direct (Ign)

123

1 BY MR. IGNALL:

2 Q Do you recognize what this document is?

3 A It's a commercial loan application.

4 Q And is this a document that you've seen before while
5 working at the bank?

6 A Yes.

7 Q And then if we look at it, whose name is this in?

8 A George Levin.

9 Q All right. And what's the date on this?

10 A It looks like 6/25/09.

11 Q Do you recall whether you saw this document on June 25th
12 of 2009?

13 A I -- I don't recall.

14 MR. IGNALL: Can you flip to the next page? Thank
15 you.

16 BY MR. IGNALL:

17 Q Do you remember if there were any discussions about
18 securing capital -- securing collateral for Mr. Levin's loan
19 after it was disbursed?

20 A No. My understanding, it was an unsecured loan.

21 Q Do you know if there were any discussions about getting
22 Mr. Levin to provide some security after the fact?

23 A I don't recall.

24 Q All right. Do you recall someone named Anthony Bonomo?

25 A Yes.

Patterson - Direct (Ign)

124

1 Q And we're done -- we're done with that exhibit, so you
2 don't have to --

3 A Okay.

4 Q And who is or was Mr. Bonomo?

5 A Mr. Bonomo was a customer of the bank.

6 Q And do you know if Mr. Bonomo had any association with
7 Ballamor Capital?

8 A My understanding, he was also a Ballamor Capital client.

9 Q All right. Do you know if Mr. Bonomo ever applied to
10 borrow money from the bank while you were a loan officer?

11 A Yes.

12 Q And, in particular, I want to turn your attention to
13 October 2009. Do you recall if Mr. Bonomo applied for a loan
14 in October of 2009?

15 A Not off the top of my head.

16 Q Are there any documents that might help refresh your
17 recollection?

18 A There would be loan documents.

19 Q Okay.

20 MR. IGNALL: May I approach with what we've marked
21 as Exhibit 304?

22 THE COURT: Yes, sir.

23 MR. IGNALL: I don't believe it's in evidence, but
24 I'd like to move it into evidence now. I believe we have a
25 stipulation.

Patterson - Direct (Ign)

125

1 UNIDENTIFIED COUNSEL: So stipulated.

2 MR. EGAN: Agreed.

3 THE COURT: Very well.

4 BY MR. IGNALL:

5 Q And actually let me show you something -- before we get
6 to that, maybe I can try something else. If I could bring
7 your attention to the screen to Exhibit 99.

8 MR. IGNALL: Which I do not believe is in evidence
9 yet.

10 AGENT BOYER: No.

11 Q Do you recognize Exhibit 99?

12 A It's an email from Mr. Hartline to myself.

13 Q And what's this email about?

14 (Pause)

15 A It's information we will need to --

16 Q But does this reflect -- refer to a particular borrower?

17 (Pause)

18 Q Do you see the middle email? Let me try this. Do you
19 recall having email conversations with Mr. Hartline on or
20 about October 19th of 2009?

21 A It's for Mr. Bonomo. I see it at the bottom.

22 Q But do you remember having an email exchange with Mr.
23 Hartline about Mr. Bonomo?

24 A Yes.

25 MR. IGNALL: I'd like to move Exhibit 99 into

Patterson - Direct (Ign)

126

1 evidence.

2 MR. EGAN: No objection.

3 UNIDENTIFIED COUNSEL: No objection.

4 THE COURT: Granted.

5 BY MR. IGNALL:

6 Q Looking at this document, do you recall about when Mr.
7 Bonomo applied for a loan with Nova Bank?

8 (Pause)

9 A Not the exact date, no.

10 Q But you know what month it was?

11 A It was in October.

12 Q All right. Do you know who brought Mr. Bonomo's
13 application to your attention?

14 A Mr. Hartline.

15 Q Did Mr. Hartline tell you what the purpose of Mr.
16 Bonomo's loan was?

17 A I believe he was refinancing real estate, plus there was
18 some additional funds to invest in the bank.

19 Q All right. Do you know if he was going to invest in
20 anything else other than the bank?

21 A Not that I'm aware of. Not that I remember.

22 Q All right. Let me turn your attention to Exhibit 109.

23 MR. IGNALL: And is this in evidence already?

24 AGENT BOYER: Yes.

25 MR. IGNALL: All right. This is already in

Patterson - Direct (Ign)

127

1 evidence. And may this be published, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. IGNALL:

4 Q Do you recognize Exhibit 109?

5 A Yes.

6 Q And what is Exhibit 109?

7 A It's a risk assessment form for --

8 Q For whom?

9 A For a loan to Anthony Bonomo.

10 Q And were you someone at the bank who reviewed this loan
11 at the time?

12 A I reviewed the RAS, yes.

13 Q All right. And is this the document you reviewed in
14 October?

15 A Yes.

16 Q All right. And if we look at the second page -- let me
17 go back to the first page. I'm sorry. What's the amount of
18 the loan that Mr. Bonomo is seeking here?

19 A 4,500,000.

20 Q And what does it say about the purpose on the first page?

21 A Financial investment.

22 MR. IGNALL: And let's go to the next page. If we
23 could bring up the transaction comments, please.

24 BY MR. IGNALL:

25 Q What -- can you read the first, you know, three

Patterson - Direct (Ign)

128

1 sentences. What do they say?

2 A "Mr. Anthony Bonomo, the borrower, is requesting a
3 \$4,500,000 commercial balloon loan from Nova Bank as indicated
4 above. This loan will be used by Mr. Bonomo for financial
5 investment purposes. Borrower indicated plans to invest the
6 funds in the Banyon Group through Ballamor Capital
7 Management."

8 Q Do you recall at the time you reviewed the loan whether
9 Mr. Hartline said anything about the Banyon Group as being a
10 purpose for the loan?

11 A I don't remember.

12 Q Do you know what the Banyon Group was?

13 A My understanding was an investment group.

14 Q Do you know who put that together?

15 A Mr. Bekkedam, --

16 Q All right.

17 A -- is my understanding.

18 Q Now, at the time you reviewed this risk assessment
19 summary, had you had a conversation with Mr. Hartline about
20 whether Mr. Bonomo was going to use any of this money to
21 invest in Nova?

22 A I believe there was a portion that was going to be
23 invested in Nova.

24 Q And is that reflected anywhere in this risk assessment
25 summary?

Patterson - Direct (Ign)

129

1 A Not that I'm aware of.

2 Q All right. Did you ever have -- let's go back to the
3 first page. And who was the credit analyst who prepared this?

4 A Joseph Madiany.

5 Q Do you recall whether you had any conversations with Mr.
6 Madiany about whether any of these loan proceeds were going to
7 be used to purchase Nova stock?

8 A No, I don't remember.

9 Q Let me turn your attention now to Exhibit 304.

10 MR. IGNALL: And if we could go to page 32148.

11 (Pause)

12 BY MR. IGNALL:

13 Q Do you know what this document is?

14 A Yes. It's a disbursement request and authorization form.

15 Q And who's it for?

16 A Anthony and Mary Ellen Bonomo.

17 Q And what's the amount of the loan?

18 A 4,500,000.

19 Q And what's the date of this loan? And it's shaded in up
20 at the top.

21 A Oh. Loan date, 10/22/09.

22 Q And what's the maturity date?

23 A 11/1/2019.

24 MR. IGNALL: Let's go back to the document.

25 Q And what's the primary purpose of the loan?

Patterson - Direct (Ign)

130

1 A Business, including real estate investment.

2 Q If we go to disbursement instructions, what's the
3 instruction for \$2.5 million?

4 A Amount paid to borrower directly, deposited to account
5 33016049.

6 Q All right. And what are the instructions for the \$2
7 million?

8 A Outgoing wire to the Banyon Group.

9 Q All right. Do you know what happened to the funds that
10 went into the account that ends in 6049?

11 A No, not off the top of my head.

12 Q Would there be bank records that would reflect what
13 happened?

14 A There should be.

15 Q All right. Let's look at page 32250. Do you recognize
16 this document?

17 A Yes.

18 Q And what is this document?

19 A It's a request for initial loan disbursement.

20 Q And what does this indicate that happened with the \$2.5
21 million?

22 A It says account to be credited, 33016049.

23 Q And is that your signature there?

24 A Yes, it is.

25 MR. IGNALL: If we can go two more -- I believe two

Patterson - Direct (Ign)

131

1 pages -- I'm sorry, 55, so five pages later.

2 BY MR. IGNALL:

3 Q And do you recognize this document?

4 A Yes.

5 Q And what is this document?

6 A It's instructions for a wire.

7 Q All right. And where is that wire going?

8 A Banyon, account number, LLC operating account.

9 Q And who is this addressed to?

10 A It's addressed to me.

11 Q And what's the date?

12 A October 21st, 2009.

13 Q Okay.

14 MR. IGNALL: May I approach the witness, Your Honor?

15 THE COURT: Yes, sir.

16 BY MR. IGNALL:

17 Q Mr. Patterson, are you familiar with someone named
18 Charles Gallub?

19 A Yes.

20 Q And who is Mr. Gallub?

21 A Mr. Gallub was a customer of the bank.

22 Q And did Mr. Gallub have any businesses who were also
23 customers of the bank?

24 A No, I don't believe so.

25 Q All right. What business was Mr. Gallub in, as best you

Patterson - Direct (Ign)

132

1 recall?

2 A Real estate development.

3 Q All right. Do you know if Mr. Gallub ever purchased Nova
4 Financial Holdings stock?

5 A I believe he did.

6 Q All right. And why do you believe that?

7 A Because that's -- that's what I was told.

8 Q Who told you that?

9 A Hal Schaffer, who was a gentleman that handled --

10 Q Did you -- let me ask a different question. Did you have
11 a discussion with Mr. Hartline about that?

12 A I believe so, yes.

13 Q Let me turn your attention to Exhibit 4.

14 MR. IGNALL: Which I believe is in evidence.

15 MS. BARRY: Yes.

16 MR. IGNALL: May we publish this to the jury?

17 THE COURT: Yes, sir.

18 BY MR. IGNALL:

19 Q Do you recognize Exhibit 4?

20 A It's a risk assessment summary.

21 Q And who's the borrower?

22 A Charles Gallub.

23 Q Well, if you look -- what's the name of the borrower, if
24 you go a bit further?

25 A I'm sorry.

Patterson - Direct (Ign)

133

1 Q So if we go a little bit farther down, about halfway down
2 the page.

3 A I'm sorry. Borrower, Bellmawr Creek, LLC.

4 Q Do you remember the name Bellmawr Creek, LLC?

5 A It was one of Mr. Gallub's companies.

6 Q And what's the amount of this loan?

7 A Facility one, 250,000.

8 Q Yes, facility -- what does facility mean?

9 A Loan. It was a specific loan.

10 Q What's the date of this risk assessment summary?

11 A September 30th, 2008.

12 Q And what does it say the purpose of the loan is for
13 facility one?

14 A Investment purposes.

15 MR. IGNALL: If we could go to the next page. And
16 go to transaction comments for facility one.

17 BY MR. IGNALL:

18 Q What does it say in the first two sentences there?

19 A Bellmawr Creek, LLC requests a \$250,000 commercial demand
20 loan at prime for a 24-month term. The proceeds will be used
21 for investment purposes in another project.

22 Q When it says NSB existing borrower, do you know what that
23 means?

24 A Nova Savings Bank existing borrower.

25 Q And what does that mean, to be an existing borrower?

Patterson - Direct (Ign)

134

1 A He was an -- he was an existing customer of the bank,
2 borrowing customer of the bank.

3 Q Did that mean that he had loans with the bank already?

4 A Yes.

5 Q All right. Let me turn your attention to Exhibit 143.

6 MR. IGNALL: Which I'm not sure is in evidence yet.

7 MS. BARRY: It is, yes.

8 MR. IGNALL: It is. May this be published, Your
9 Honor?

10 THE COURT: Yes, sir.

11 MR. IGNALL: All right.

12 BY MR. IGNALL:

13 Q Do you recognize Exhibit 143?

14 A Yeah. It's a risk assessment summary.

15 Q And who's the borrower here?

16 A Bellmawr Creek, LLC.

17 Q And who's the contact name?

18 A Contact name is Charles Gallub.

19 Q And what's the date of this risk assessment summary?

20 A 12/15/2009.

21 Q And who's the -- what's the -- what does RM say at the
22 top?

23 A Relationship manager.

24 Q And what does that mean?

25 A That's the loan officer who has that customer.

Patterson - Direct (Ign)

135

1 Q And who is that in this case?

2 A That is myself.

3 Q All right. And how much is this loan for?

4 A 500,000.

5 Q Do you know what the purpose of this loan was?

6 A Working capital.

7 Q Do you know if that was the -- what Mr. Gallub used the
8 funds for?

9 A Probably. I mean he had numerous --

10 MR. EGAN: Objection.

11 THE COURT: Sustained.

12 BY MR. IGNALL:

13 Q Do you know?

14 A No.

15 Q All right. Is this a document you reviewed?

16 A Yes.

17 Q Okay. And were you part of the loan committee that
18 approved this loan?

19 A Yes.

20 MR. IGNALL: May I have one moment --

21 THE COURT: Yes, sir.

22 MR. IGNALL: -- for them to publish that.

23 (Pause)

24 BY MR. IGNALL:

25 Q Do you know if there were any firms outside of Nova Bank

Patterson - Direct (Ign)

136

1 that were involved in raising capital or raising funds for the
2 holding company?

3 A Any firms?

4 Q Any business -- any outside company or entity that was
5 involved in raising money, raising -- getting people --
6 seeking people to invest in Nova Holdings?

7 A Besides Ballamor?

8 Q Well, --

9 A Ballamor Capital was one.

10 Q Okay. Are you aware of any other firms?

11 A I think Delaware Valley Financial Group was a company.

12 Q All right. Do you know whether the bank ultimately was
13 approved for funds from the TARP program?

14 A My understanding is they were not.

15 Q And who told you that?

16 A Mr. Hartline.

17 Q Do you remember approximately when that was?

18 A No.

19 Q All right. Do you know if the bank was audited on a
20 regular basis?

21 A Yes, they were.

22 Q And do you know how often that was?

23 A No, not off the top of my head.

24 Q Do you -- but was it every year?

25 A I believe so.

Patterson - Direct (Ign)

137

1 Q Okay. Do you remember whether you had any conversations
2 with Mr. Hartline about the audit for 2009, and in particular
3 any conversations about the loan to Mr. Levin --

4 MR. EGAN: Objection to the leading, Your Honor.

5 THE COURT: Sustained.

6 BY MR. IGNALL:

7 Q Do -- do you recall whether you had any conversations
8 with Mr. Hartline about the audit for the year 2009?

9 A Yes.

10 Q And at any point did the topic of Mr. Levin's loan come
11 up in that conversation?

12 A Yes.

13 Q Please -- what did Mr. Hartline say about the auditors
14 and Mr. Levin's loan?

15 A I just believe the auditors were questioning Mr. Levin's
16 loan.

17 Q And did he tell you what the question was or --

18 A No.

19 Q Okay. Did Mr. Hartline tell you whether he had spoken to
20 the auditors?

21 A Yes.

22 Q And what did he tell you he told the auditors about the
23 Levin loan?

24 A I don't -- I don't know. He just said they questioned
25 him about it.

Patterson - Direct (Ign)

138

1 Q Did he -- did you talk to him about whether there was any
2 relationship between Mr. Levin's loan and the investment in
3 the bank?

4 MR. EGAN: Objection. Leading.

5 THE COURT: Overruled.

6 A Yes.

7 Q And did he tell you whether he had spoken to the auditors
8 about that?

9 A Yes.

10 Q And what did he say he spoke -- told the auditors?

11 A I don't know that he told me what he told the auditors,
12 just that they had a conversation.

13 MR. EGAN: Objection.

14 THE COURT: No, he said just -- he said what he said
15 all along.

16 MR. IGNALL: All right.

17 BY MR. IGNALL:

18 Q Do you -- was there any conversation with Mr. Hartline
19 about -- with -- and I'm focused just on any conversations
20 about the audit. Did the topic of Mr. Levin borrowing money
21 for property renovations come up?

22 MR. EGAN: Objection, Your Honor.

23 THE COURT: That's sustained.

24 BY MR. IGNALL:

25 Q What, if anything, did Mr. Hartline tell you that he

Patterson - Direct (Ign)

139

1 discussed with the auditors in connection with the purpose of
2 Mr. Levin's loan?

3 MR. EGAN: Objection. Asked and answered.

4 THE COURT: Overruled.

5 A I'm sorry, could you repeat that?

6 Q I'll try.

7 A Sorry.

8 Q What, if anything, did Mr. Hartline tell you that he
9 discussed with the auditors --

10 A Right.

11 Q -- about the purpose of Mr. Levin's loan?

12 A I believe it was that the actual purpose of the loan was
13 to do renovations to a property located in Malvern.

14 Q And did he tell you whether he said that to the auditors?

15 A I believe he did, yes.

16 Q Okay. Did you know whether that was indeed the purpose
17 of the loan at the time you had this conversation with Mr.
18 Hartline?

19 A I did not.

20 Q And did you question Mr. Hartline about that?

21 A No, I did not.

22 Q Why not?

23 A Because he's the boss.

24 MR. IGNALL: One moment, Your Honor.

25 THE COURT: Yes, sir.

Patterson - Direct (Ign)

140

1 (Pause)

2 MR. IGNALL: Nothing further. Thank you, Your
3 Honor.

4 (Pause)

5 MR. IGNALL: Sorry about that. I spoke too soon.
6 May I?

7 THE COURT: Yes, sir.

8 MR. IGNALL: We have one more document just I
9 overlooked. Can we show just to the witness Exhibit 96.

10 BY MR. IGNALL:

11 Q Do you recognize Exhibit 96?

12 A Yes.

13 Q And what is Exhibit 96?

14 A It's a memorandum from myself in reference to Mr.
15 Gallub's loans.

16 Q And what are you recounting here in Exhibit 96?

17 A It was just a call I met -- I made to Mr. Gallub.

18 Q All right. And what are you describing in this
19 memorandum?

20 A His various loans.

21 Q And --

22 A His various projects.

23 Q And does this memorandum reflect the various loans that
24 Mr. Gallub had with the bank as of October 12th, 2009?

25 A Yes.

Patterson - Cross (Ega)

141

1 MR. IGNALL: The Government moves into evidence
2 Exhibit 96.

3 MR. EGAN: No objection.

4 UNIDENTIFIED COUNSEL: No objection.

5 THE COURT: Admitted.

6 MR. IGNALL: All right. Thank you. No further
7 questions. Thank you.

8 MR. EGAN: May I inquire, Your Honor?

9 THE COURT: You may proceed.

10 CROSS-EXAMINATION

11 BY MR. EGAN:

12 Q Good afternoon, Mr. Patterson.

13 A Good afternoon.

14 Q You were a loan officer, correct?

15 A Yes, sir.

16 Q And essentially a loan officer is someone who originates
17 loans, right?

18 A Correct.

19 Q And, in fact, you get paid for originating loans, right?

20 A Yes.

21 Q It's kind of a sales job?

22 A Yes.

23 Q And in that role, one of your -- one of your main
24 functions is to interface with the customer, correct?

25 A Yes.

Patterson - Cross (Ega)

142

1 Q And to get the information from them that's necessary so
2 that you can get everything you need to get the loan approved,
3 right?

4 A Correct.

5 Q And, needless to say, it's in your best interest to have
6 more loans approved than not, right?

7 A Yes.

8 Q And that's because you're paid based upon your
9 production, correct?

10 A No, I was not on commission. I was on base salary.

11 Q But there was a consideration of your production that
12 went into your total comp?

13 A There were production goals.

14 Q Sure. And in terms of the actual credit analysis as to
15 whether a loan was creditworthy, that wouldn't really be your
16 end of things, right?

17 A Correct.

18 Q That was something for Mr. Madiany?

19 A It was the credit department.

20 Q Right.

21 A Some -- someone in credit.

22 Q Mr. Poliski?

23 A Yes.

24 Q And it was those two -- or actually Mr. Poliski who would
25 decide whether a loan was creditworthy enough to go before the

Patterson - Cross (Ega)

143

1 loan committee, correct?

2 A Yes.

3 Q And with regard to audits, did you have a role in audits?

4 A No.

5 Q So basically the whole auditing function was something
6 that didn't really touch on you?

7 A Correct.

8 Q So when KPMG audited Nova Bank, you weren't really
9 involved in the discussions, correct?

10 A That's correct.

11 Q Now, I want to talk about the beginning of the
12 relationship that you had with Mr. Levin, that the bank had
13 with Mr. Levin. You were shown a document a little earlier
14 today that showed that he had begun his relationship sometime
15 around April, correct?

16 A Correct.

17 Q And that was an effort to become involved in a loan that
18 had to do with some Colorado bonds or some such thing,
19 remember that?

20 A Yes.

21 Q And in order to assess that loan, you would have needed
22 some financial materials from Mr. Levin, right?

23 A Correct.

24 Q And you also saw some information presented to you by the
25 Government about a loan that was an assumption loan, I believe

Patterson - Cross (Ega)

144

1 it's called, that was to take place in May, correct?

2 A Correct.

3 Q And you would have needed his financials to assess that
4 as well, correct?

5 A Correct.

6 Q So by the time June came around and you were introduced
7 to the possibility of Nova lending money to Mr. Levin, you
8 were already fairly familiar with his financial situation?

9 A Correct.

10 Q And you knew that he was an extremely wealthy man,
11 correct?

12 A Correct.

13 Q Well, we've heard upwards of \$300 million. Is that about
14 what you heard?

15 A I guess. I don't remember off the top of my head, --

16 Q You don't really remember.

17 A -- but he was a very wealthy individual.

18 Q This was a long time ago?

19 A Yes, it was.

20 Q And it's kind of hard to remember everything, correct?

21 A Yes.

22 Q In any event, Mr. Levin applied for a loan, correct?

23 A Correct.

24 MR. EGAN: And if we could have Government's 301.

25 BY MR. EGAN:

Patterson - Cross (Ega)

145

1 Q And you were shown this document by Mr. Ignall, right?

2 A Yes.

3 Q And this is basically most of the loan documents for the
4 case, correct?

5 A Correct.

6 Q For his loan?

7 A Correct.

8 MR. EGAN: And if we could go to page 24.

9 Q You were shown that by Mr. Ignall, correct?

10 A Correct.

11 MR. EGAN: And if you could blow that up.

12 Q That is the commercial loan application, correct?

13 A Yes, it is.

14 Q And it indicates that the loan was applied for on June
15 25th?

16 A Yes.

17 Q And the handwriting that's filling in the boxes, that's
18 your writing, isn't it?

19 A Yes, it is.

20 Q Okay. So you obviously -- I believe you said to Mr.
21 Ignall you didn't remember seeing this document, but clearly
22 you must have seen it, right?

23 A Yes.

24 Q Because you filled it out, correct?

25 A Yes.

Patterson - Cross (Ega)

146

1 Q And at the time you filled it out, you had been advised
2 that the reason that Mr. Levin wanted to borrow this money was
3 because he was going to invest in Nova Bank, correct?

4 A Correct.

5 Q And you put into the application form all of the
6 information that was then passed down the line to Mr. Madiany,
7 correct?

8 A Correct.

9 MR. EGAN: Now, if we could go to the next page and
10 blow that up.

11 Q And that is basically an assessment, correct?

12 A Correct.

13 Q And you fill in all those -- those are all your -- that's
14 all your handwriting, right?

15 A Correct.

16 Q And then you sign it at the bottom?

17 A Correct.

18 MR. EGAN: And if we could just blow up the very
19 top, sort of gray section. The very top above the line.

20 Q And that's the information that you passed on to Mr.
21 Madiany, correct?

22 A Correct.

23 Q All right.

24 MR. EGAN: Now, if we could just go to the next
25 page, and if we could have the bottom section, starting at

Patterson - Cross (Ega)

147

1 payment calculation down. And then go down to the bottom.

2 Thanks.

3 BY MR. EGAN:

4 Q Okay. So this -- these are the terms of the loan,
5 correct?

6 A Correct.

7 Q And it's a one year loan?

8 A Yes.

9 Q And he's supposed to pay 7 percent?

10 A Yes.

11 Q Okay.

12 MR. EGAN: Now, if we could go down to the box there
13 at the bottom.

14 Q That shows the finance charges, right?

15 A Yes.

16 Q And so by making this loan, Nova stood to get a profit of
17 \$177,000 in a year, correct?

18 A Correct.

19 Q And that's why banks make loans, right?

20 A Yes.

21 Q To make money?

22 A Yes.

23 MR. ENGLE: Your Honor, may I have a moment with Mr.
24 Egan?

25 THE COURT: Surely.

Patterson - Cross (Ega)

148

1 (Pause)

2 MR. ENGLE: Sorry, Your Honor. Thank you.

3 THE COURT: Yes, sir.

4 MR. EGAN: Mr. Engle advises me that I should be
5 having this published because it's already in evidence. So if
6 we could publish it, that would be -- that would be good.

7 THE COURT: Granted.

8 BY MR. EGAN:

9 Q So that shows the \$177,916.63 that the bank would make in
10 a year if this -- off this loan, correct?

11 A Yes, sir.

12 Q Okay. And I know you're not the nuts and bolts guy in
13 terms of the whole credit thing, but you know basically what
14 standard terms were at the time, right?

15 A Yes.

16 Q And this loan, based on the type of loan it was, was
17 completely standard terms, correct?

18 A Yes.

19 Q Now, you were asked some questions about what you told
20 other folks on the loan committee about the purpose of the
21 loan when you walked it around. Do you remember that?

22 A Yes.

23 Q And I believe you said you didn't really remember if you
24 told them that it was to invest in the bank or not, is that
25 correct?

Patterson - Cross (Ega)

149

1 A Correct.

2 Q But you certainly weren't hiding the fact that it was to
3 invest in the bank from them, were you?

4 A No.

5 Q And if any of them had asked that question, you certainly
6 would have told them the truth, correct?

7 A Yes.

8 Q And Mr. Hartline never told you to hide that fact from
9 anybody, did he?

10 A No, he didn't.

11 Q And, in fact, it was -- and I want to get this right --
12 was not a well kept secret that this was a loan to Mr. Levin
13 so that he could invest in the bank, correct?

14 MR. IGNALL: Objection. Argumentative.

15 THE COURT: Sustained.

16 BY MR. EGAN:

17 Q Well, sir, do you remember testifying in a civil matter
18 about this case?

19 A A civil matter?

20 Q Yeah. It was a deposition. Do you remember that?

21 A No.

22 MR. EGAN: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 MR. EGAN: I have D-212 and I'm at page 24.

25 BY MR. EGAN:

Patterson - Cross (Ega)

150

1 Q Sir, I'm showing you what's been marked D-212, and it's a
2 deposition in a lawsuit. It's Nova Bank v. Hilary Musser.

3 A Okay.

4 Q And it's -- that's you, Thomas Patterson, right?

5 A Yes.

6 Q Do you recall this now? You were under oath?

7 MR. IGNALL: Your Honor, my objection was not to
8 whether this witness had said it before, but that the question
9 itself is argumentative, whether it's before or now.

10 THE COURT: May I see you, please?

11 (Sidebar begins)

12 THE COURT: What's your objection?

13 MR. IGNALL: Well, my first objection was that it's
14 argumentative. I don't doubt that this witness in a prior
15 deposition said it was not a well kept secret. But just
16 because an argumentative question was answered in a prior
17 setting doesn't make it admissible here. If Mr. Egan wants to
18 ask who else knew about it, that's perfectly fine.

19 MR. EGAN: How can an answer to a question be
20 argumentative?

21 MR. IGNALL: The question can be argumentative.

22 THE COURT: I sustained the objection because he
23 asked this witness whether it was a well kept secret and as
24 gatekeeper that meant nothing to me, and I don't think it
25 meant anything to the jury. But you can hone your question to

Patterson - Cross (Ega)

151

1 something specific that would be meaningful, probative, and
2 relevant.

3 MR. EGAN: Thank you, Your Honor.

4 MR. IGNALL: Okay. Thank you.

5 (Sidebar ends)

6 BY MR. EGAN:

7 Q Mr. Patterson, the fact is that in June of 2009, it's
8 your belief that there were several people at the bank who
9 knew that this loan was for an investment, correct?

10 A Yes.

11 Q And they included Ed DiMarcantonio?

12 A Yes.

13 Q Who was the chairman of the board?

14 A Correct.

15 Q And they included Mr. Madiany, correct?

16 A Correct.

17 Q And they included Mr. Poliski and Mr. Hanuscin as well,
18 correct?

19 A Correct.

20 Q And everyone voted to approve this loan, correct?

21 A Yes.

22 Q Now, you were asked some questions about the minutes,
23 about the timing of the board meeting, --

24 A Yes.

25 Q -- remember that? And you were shown that the board

Patterson - Cross (Ega)

152

1 meeting ended that morning at about I think 10:00, somewhere
2 in that neighborhood, right?

3 A Yes.

4 Q And that this loan was then ultimately approved around
5 11:00 or 11:15, correct?

6 A Correct.

7 Q Now, obviously if all of the paperwork wasn't together to
8 take to the board -- to the loan committee meeting, you would
9 then walk it around after the meeting was over, correct?

10 A Yes.

11 Q But when you walked it around, you went to every one of
12 these individuals, right?

13 A Yes.

14 Q And you presented the documents to every one of them,
15 right?

16 A Yes.

17 Q And they all made an independent decision to vote yes,
18 correct?

19 A Yes. Correct.

20 Q And you then funded the loan, right?

21 A Correct.

22 Q Now, you were shown a document on direct which was wiring
23 instructions. Do you remember that?

24 A Yes.

25 Q And you were asked about who gave you those wiring

Patterson - Cross (Ega)

153

1 instructions. Do you remember that?

2 A Yes.

3 Q And I believe your answer was the borrower would give the
4 instructions as to where the loan -- the funds would go,
5 right?

6 A Correct.

7 Q That's because they're his funds, right?

8 A Correct.

9 Q And Mr. Ignall pressed on and said, well, wasn't it Mr.
10 Hartline who told you that? But it's not up to Mr. Hartline
11 to decide where the borrower's funds go, is it?

12 A No.

13 Q It's up the borrower?

14 A Correct.

15 Q And indeed the borrower signed off on that document and
16 elected to have those funds sent to that particular bank,
17 correct?

18 A Yes.

19 Q Now, those funds were the proceeds of the loan, correct?

20 A Correct.

21 Q And they're wired to the borrower's bank?

22 A Correct.

23 Q The borrower then has possession of those funds, correct?

24 A Yes.

25 Q The borrower can decide whether they want to send them

Patterson - Cross (Ega)

154

1 back or not, correct?

2 A Correct.

3 Q It's entirely their decision?

4 A Correct.

5 Q Their decision whether they want to invest in Nova Bank
6 or not, correct?

7 A Correct.

8 Q But the bank at that point has a loan, correct?

9 A Yes.

10 Q And that loan is of value to the bank, is it not?

11 A Yes, it is.

12 Q It's an asset, isn't it?

13 A Yes, it is.

14 Q And the borrower, in this case Mr. Levin, agreed to
15 invest in the holding company, correct?

16 A Yes.

17 Q He doesn't really actually invest in the bank, he invests
18 in the holding company, right?

19 A Correct.

20 Q And he had his agent, instructed his agent to wire those
21 funds to the holding company, correct?

22 A Correct.

23 Q And after that, it really wasn't any of your issue,
24 right?

25 A Correct.

Patterson - Cross (Ega)

155

1 Q Because now you're on to your next loan?

2 A Correct.

3 Q Now, you were asked a number of questions about whether
4 there was a reason to revisit the RAS in this case. Do you
5 remember that?

6 A Yes.

7 Q So I want to show you a document -- oh, wait. Excuse me.

8 MR. EGAN: Could we have G-59, please? And if we
9 could have like the top -- paragraph two blown up.

10 BY MR. EGAN:

11 Q Do you recognize this document, sir?

12 A It's the loan committee minutes from July 14th, 2009.

13 MR. EGAN: And I believe it's in evidence, correct?

14 No? Okay.

15 Q And the loan committee minutes would be from the meeting
16 -- the regular weekly loan committee meeting, right?

17 A Correct.

18 Q And paragraph two -- you were asked about how loans that
19 were approved by walking around became part of the loan
20 committee minutes. Do you remember that?

21 A Right. Yes.

22 Q And paragraph two says: "The committee reviewed and
23 approved the ratification of loans approved report for Nova
24 Bank for July 2009." See that?

25 A Yes.

Patterson - Cross (Ega)

156

1 Q And on a motion by you, they were approved, correct?

2 A Yes.

3 MR. EGAN: And if we go to page 2, and on the bottom
4 part of the top section, if you could blow that up as big as
5 possible, right above the break where it says proved. There
6 you go.

7 BY MR. EGAN:

8 Q And I don't know if you can see that well enough, but if
9 you look three lines up from the bottom, that says George
10 Levin, right?

11 A Yes, it does.

12 Q And that's the \$5 million loan that we previously
13 discussed?

14 A Yes, it is.

15 Q So it's brought to the attention of the loan committee at
16 the next meeting or shortly thereafter, correct?

17 A Correct.

18 Q Now, in November, do you recall --

19 MR. EGAN: And you can take that down.

20 Q Do you recall that Mr. Levin ultimately didn't invest his
21 money in Nova Bank, the rest of it? Were you aware of that?

22 A Yes, he did not.

23 Q And that Mr. Levin was looking for new terms for his loan
24 later on? Do you remember that?

25 A No, I don't.

Patterson - Cross (Ega)

157

1 Q Okay. I'm going to show you a document, once I can find
2 it, from November of 2009.

3 MR. EGAN: If I can have a moment, Your Honor?

4 THE COURT: Yes, sir.

5 (Pause)

6 BY MR. EGAN:

7 Q First I want to show you Defense 48. And you see that,
8 sir, is an email --

9 MR. EGAN: And if we could blow up the top, please.

10 Q -- and it is from Mr. Madiany to you, correct, and Mr.
11 Poliski?

12 A Correct.

13 Q And it speaks about a correction on the first page on --
14 paragraph on page 3 of the Levin RAS, correct?

15 A Correct.

16 Q Is that right?

17 A Correct.

18 Q Now, you didn't -- you didn't remember this at all, did
19 you?

20 A No, not off the top of my head, no.

21 Q But it's not unusual for a RAS to ultimately be revised
22 at some point, correct?

23 A It's not unusual.

24 Q And if indeed Mr. Levin was seeking to put real estate as
25 collateral for this loan, the RAS would need to be revised to

Patterson - Cross (Ega)

158

1 reflect that, wouldn't it?

2 MR. IGNALL: Objection. Calls for speculation.

3 THE COURT: You can rephrase.

4 BY MR. EGAN:

5 Q When a RAS -- when a loan is going to be amended, the RAS
6 gets revised, correct?

7 A Correct.

8 Q And one of the reasons you would revise the RAS would be
9 because someone was putting real estate up as collateral,
10 correct?

11 A That could be a reason, yes.

12 Q And it would -- because it would change the terms of the
13 loan, right?

14 A It wouldn't necessarily change the terms, but it would
15 change the collateral.

16 Q And in -- good point. And indeed if that were the case,
17 the RAS would have to be revised?

18 A Correct.

19 Q And that would be something that would be done in the
20 credit department, correct?

21 A Correct.

22 Q And it could be done by anybody in the credit department,
23 correct?

24 A Correct.

25 Q But it's not something you would do?

Patterson - Cross (Ega)

159

1 A No.

2 Q And you never altered any RAS in this case, correct?

3 A I don't believe so, no.

4 MR. EGAN: Now if we could go to Government's 118,
5 please.

6 BY MR. EGAN:

7 Q And do you recognize this document, sir?

8 A It's from Mr. Madiany to myself.

9 Q And it is a -- once again attaching a RAS, correct?

10 A Correct.

11 Q And it's a -- the George Levin RAS, correct?

12 A Correct.

13 Q And if we could go to page 2 of this document, I believe
14 you were shown it by Mr. Ignall, this is the RAS that talks
15 about the real estate, correct?

16 A Yes.

17 Q Now, you have no -- this doesn't refresh your
18 recollection about Mr. Levin wanting to put up the real estate
19 as collateral later on in the day?

20 (Pause)

21 A No, I don't -- I didn't -- I don't believe the real
22 estate was offered as collateral.

23 MR. EGAN: If we could have Defense 68, please.

24 Q And this is an email to yourself, correct?

25 A Yes, it is.

Patterson - Cross (Ega)

160

1 Q From Mr. Preve, correct?

2 A That is correct.

3 Q And he was Levin's business manager, right?

4 A Correct.

5 Q And it's dated November 13th, 2009, correct?

6 A Yes.

7 Q And you're asking him for the operating agreement and
8 formation documents for 326 South Fairfield, LLC. Do you
9 remember that?

10 A Yes.

11 Q And that was the operating group that owned the real
12 estate, correct?

13 A I believe so, yes.

14 Q And the real estate was at 326 South Fairfield, and
15 that's why it was called that, right?

16 A Yes.

17 Q Does that refresh your recollection about Mr. Levin
18 wanting to use that real estate as collateral for the loan?

19 A Yes, I guess he did.

20 Q But absent seeing that, you don't really remember any of
21 this at all, do you?

22 A No, I don't.

23 Q And this was your job, right? This is like what you were
24 working on, correct?

25 A What do you mean by that?

Patterson - Cross (Ega)

161

1 Q I mean putting these loan packages together to go to the
2 credit department, that was your job, right?

3 A Yes.

4 Q That's why you're asking for this information?

5 A Right, so I can take it to the credit department.

6 Q Right. It's the nuts and bolts of what you did in 2009?

7 A Um-hmm.

8 Q Right?

9 A Yes.

10 Q But you didn't really have anything to do with audits,
11 correct?

12 A Correct.

13 Q Now, let's talk just a little bit about Mr. Bonomo. Mr.
14 Bonomo was a longstanding customer of the bank, correct?

15 A Correct.

16 Q His company was a customer of the bank; do you remember
17 that?

18 A No.

19 Q API or something like that?

20 A Yes.

21 Q Yes. A very big customer, right?

22 A Yes.

23 Q Mr. Bonomo was a very wealthy man as well, correct?

24 A Correct.

25 Q And you were asked to prepare the documents to start his

Patterson - Cross (Ega)

162

1 loan, correct?

2 A Correct.

3 Q And you were told what the purpose of the loan was,
4 correct?

5 A Correct.

6 Q You didn't have any issue with that, did you?

7 A No.

8 Q You did the work and you prepared the documents, correct?

9 A I didn't actually prepare them, but, yes.

10 Q You moved the ball forward?

11 A Yes.

12 Q The credit department reviewed the loan and approved it,
13 correct?

14 A Yes.

15 Q And you voted at loan committee to approve it?

16 A Correct.

17 Q And, once again, you knew at the time what the purpose of
18 the loan was?

19 A Yes.

20 Q And Mr. Gallub, same thing?

21 A Yes.

22 Q And actually now that you've seen the documents, Bellmawr
23 Investments or Bellmawr, you remember they were a big customer
24 of the bank, too?

25 A That was one of Mr. Gallub's companies.

Patterson - Cross (Ega)

163

1 Q Correct, --

2 A Yes.

3 Q -- and they were a bank customer as well?

4 A Correct.

5 Q And Mr. Gallub's whole relationship with the bank, we can
6 get the RAS back up, it was around \$5 million itself, wasn't
7 it?

8 A Somewhere around there.

9 Q And you were asked about a loan Mr. Gallub took out in
10 2008. Do you remember that?

11 A Yes.

12 Q And that was a loan that he used to invest in the bank,
13 correct?

14 A Correct.

15 Q And that would have been in 2008 before the KPMG audit of
16 2009, correct?

17 A Correct.

18 Q So that there had been an audit by KPMG of that loan
19 before the loan to Mr. Levin occurred, correct?

20 MR. IGNALL: Objection. Calls for speculation.

21 THE COURT: Counsel, rephrase it.

22 BY MR. EGAN:

23 Q The loan took place in 2008, right?

24 A Correct.

25 Q KPMG audits in 2009, correct?

Patterson - Cross (Ega)

164

1 A Correct.

2 Q They audit in the spring of 2009, correct?

3 A Correct.

4 Q The loan to Mr. Levin doesn't occur until June of 2009,
5 correct?

6 A Yes.

7 Q June is after the spring, correct?

8 A Correct.

9 Q Mr. Patterson, you had a bit of a problem with -- or got
10 into a little trouble with the bank, right?

11 A Correct.

12 Q And that issue had to do with you basically moving money
13 from one person's account to another, right?

14 A Yes.

15 Q And the way you did that was by creating false loan
16 documents, right?

17 A No.

18 Q Well, maybe you can tell us how you did it.

19 A I drew off a customer's line of credit and deposited it
20 into another customer's account.

21 Q Okay. And as I understand it, that's because that other
22 customer thought he was getting a loan, right?

23 A Correct.

24 Q And they didn't get the loan, right?

25 A Correct.

Patterson - Cross (Ega)

165

1 Q But you had led them to believe they were going to get
2 the loan?

3 A Correct.

4 Q And basically you lied to them?

5 A Correct.

6 Q And as a result, you didn't want that -- them to know
7 that you had lied to them, right?

8 A Um-hmm. Correct.

9 Q So you took money from somebody else and you put it into
10 their account?

11 A Correct.

12 Q And that somebody else is then out their money, right?

13 A Yes.

14 Q And that was discovered not by the Government, but by the
15 bank, correct?

16 A I assume so, yes.

17 Q Well, you remember Mr. Deitrich?

18 A Yes.

19 Q He's the one who came and talked to you about it;
20 remember that?

21 A Yes.

22 Q Okay. And all of that took place has nothing to do with
23 anything we talked about today, right?

24 A Correct.

25 Q And it all took place after all of these events we've

Patterson - Cross (Ega)

166

1 talked about today, right?

2 A Correct.

3 Q And Nova Bank went to the Government and gave them that
4 information, didn't they?

5 MR. IGNALL: Objection. Foundation.

6 A I don't know.

7 Q Well, you ended up being --

8 THE COURT: If he knows.

9 Q -- you ended up being prosecuted, correct?

10 A Yes, I was.

11 Q And that was after Mr. Deitrich spoke with you, right?

12 A Yes.

13 Q And after the investigation?

14 A Yes.

15 Q And when you came down to -- you got charged, right?

16 A Correct.

17 Q Came down here and you pled guilty?

18 A Yes, I did.

19 Q And when you plead guilty in a criminal case in this
20 building, one of the things that's in your best interest is to
21 cooperate with the Government, right?

22 A Correct.

23 Q And by cooperating with the Government, that means
24 meeting with agents, right?

25 A Yes.

Patterson - Cross (Ega)

167

1 Q It means answering their questions?

2 A Yes.

3 Q And it means coming in to court and testifying like
4 you're doing today?

5 A Correct.

6 Q And you got a shorter sentence for doing that, right?

7 A I don't know. I got a shorter sentence. Was it because
8 of that? I don't know.

9 Q Well, the Government got up and told the judge you were
10 cooperating, didn't they?

11 A Yes, they did.

12 Q Okay. Your lawyer didn't tell you that was going to get
13 you a shorter sentence?

14 A No, he didn't promise me anything.

15 MR. IGNALL: Objection.

16 Q I didn't ask if he promised you.

17 THE COURT: Sustained. Sustained.

18 Q Sustained to that question. In any event, that's why
19 you're here, right?

20 A I'm here because I was subpoenaed to be here.

21 Q And you also agreed to cooperate?

22 A Yes.

23 MR. EGAN: I have nothing further, Your Honor.

24 THE COURT: Let me instruct the jury that that
25 matter did not occur before this Court. I have no vested

Patterson - Cross (Eng)

168

1 interest in that, so don't be persuaded by that in terms of
2 me. Thank you. You may continue.

3 MR. ENGLE: Thank you, Your Honor.

4 (Pause)

5 MR. ENGLE: May I, Your Honor?

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. ENGLE:

9 Q Good afternoon, Mr. Patterson.

10 A Good afternoon.

11 Q Mr. Patterson, you came to the employ of Nova Bank around
12 2006; that was your testimony?

13 A Correct.

14 Q And you basically had the same position as a senior
15 lending officer the entire time, am I correct about that?

16 A Yes.

17 Q And were you on the loan committee the entire time?

18 A Yes.

19 Q Okay. And when you came to work for Nova Bank -- and
20 just so that we're clear, there's Nova Bank and there's Nova
21 Holding Company, right?

22 A Correct.

23 Q Two separate entities?

24 A Correct.

25 Q And you did not work for Nova Holding Company, you worked

Patterson - Cross (Eng)

169

1 for Nova Bank?

2 A Yes.

3 Q All right. Now, when you came to work for Nova Bank, you
4 came to know of Barry Bekkedam, right?

5 A Correct.

6 Q And at that time, I believe your testimony on direct
7 examination was that Mr. Bekkedam was the chairman of the
8 board of the holding company, correct?

9 A Correct.

10 Q Not the bank?

11 A Correct.

12 Q All right. And it was a short time later from when you
13 started in 2006, in 2007 that Mr. Bekkedam stepped down as the
14 chairman of the holding company, am I right?

15 A Correct.

16 Q And it was your understanding that Mr. Bekkedam was busy
17 with his business, Ballamor Capital, right?

18 A Correct.

19 Q Okay. Now, during the time when -- or after Mr. Bekkedam
20 stepped down as the chairman of the holding company, you
21 didn't have much interaction with him at all during your time
22 at Nova, correct?

23 A Not much, no.

24 Q Occasional phone call?

25 A Occasional phone call; occasional meeting.

Patterson - Cross (Eng)

170

1 Q See him every once in a while?

2 A Yes.

3 Q Okay. You certainly weren't receiving regular emails
4 from him?

5 A No.

6 Q Weren't receiving regular phone calls?

7 A No.

8 Q He wasn't regularly contacting you about what you needed
9 to do and whether or not a loan was going to be processed and
10 approved, correct?

11 A Correct.

12 Q All right. Now, you also indicated that there were times
13 when Mr. Bekkedam would send over a Ballamor client to the
14 bank?

15 A Correct.

16 Q All right. Now, we've heard some -- some testimony about
17 George Levin. I'm sure you recall what we've been talking
18 about today.

19 A Yes.

20 Q Mr. Levin was not, in fact, a client of Ballamor, but he
21 was an individual that Mr. Bekkedam introduced to Nova Bank,
22 correct?

23 A That's my understanding, yes.

24 Q All right. But there were other occasions where there
25 were other clients that were referred to the bank to have an

Patterson - Cross (Eng)

171

1 account there sometimes, right?

2 A Yes.

3 Q And there were a handful of people that got a loan of
4 some sort?

5 A Yes.

6 Q Could be a mortgage on their home?

7 A Yes.

8 Q Okay. And was it your understanding that during the time
9 that you were at Nova Bank from 2006 until 2010, there were
10 really only four Ballamor customers that had obtained a loan
11 of some kind from Nova Bank, right?

12 A Um --

13 Q There was a Hilary Musser, right?

14 A Right.

15 Q That's one.

16 A Um-hmm.

17 Q How about Mr. and Mrs. Orendorff (phonetic)?

18 A Yes. Correct.

19 Q That's two, right?

20 A Um-hmm.

21 Q Steven --

22 THE COURT: Please say yes or no.

23 A Yes.

24 Q Steven Seagal?

25 A Yes.

Patterson - Cross (Eng)

172

- 1 Q The actor, right?
- 2 A Yes. Correct.
- 3 Q Okay. So that's three. And Anthony Bonomo?
- 4 A Yes.
- 5 Q Four.
- 6 A Okay.
- 7 Q Can you think of any others?
- 8 A Not off the top of my head, no.
- 9 Q All right. So during your four years, there were four
- 10 Ballamor clients that were referred to the bank that had some
- 11 kind of lending relationship with the bank?
- 12 A Yes.
- 13 Q Now, you also knew that Mr. Bekkedam was doing work for
- 14 the holding company by raising capital for the holding
- 15 company, correct?
- 16 A Yes.
- 17 Q And that was something that was commonly occurring during
- 18 the time that you were employed by the bank for those four
- 19 years, correct?
- 20 A Yes.
- 21 Q Because the holding company needed to consistently raise
- 22 capital?
- 23 A Correct.
- 24 Q That's just part of the industry, right?
- 25 A Yes.

Patterson - Cross (Eng)

173

1 Q And that industry will then have people outside of the
2 holding company go out and try to find people who are willing
3 to invest in that holding company, isn't that also correct?

4 A Yes.

5 Q And for Nova Holding Company, that was Mr. Bekkedam?

6 A Yes.

7 Q And he had been raising capital for the holding company
8 all during the time that you worked there?

9 A Correct.

10 Q And it was your understanding that he was attempting to
11 get people to invest in the bank at the -- or in the holding
12 company, excuse me, at the holding company's direction, isn't
13 that right?

14 A Yes.

15 Q And that would be from the direction of the members of
16 the board of the holding company, right?

17 A Correct.

18 Q Now, all during that time that Mr. Bekkedam is raising
19 capital for the holding company, Mr. Bekkedam himself did not
20 own any stock in the holding company, am I also right about
21 that?

22 A I believe you are, yes.

23 Q Okay. So he had no, zero ownership interest in Nova
24 Holding?

25 A Correct.

Patterson - Cross (Eng)

174

1 Q When these four Ballamor clients were referred to you and
2 you acted as the relationship manager, is that -- am I correct
3 about that?

4 A Yes.

5 Q When you were dealing as the relationship manager for
6 these four Ballamor clients who had some kind of lending
7 connection with Nova, Mr. Bekkedam was not pressuring you to
8 approve the loans, was he?

9 A No.

10 Q He wasn't trying to pay you off to do that, was he?

11 A No.

12 Q He didn't do anything improper during the course of that
13 process?

14 A Correct.

15 Q Now, it's also your position that Ballamor clients, the
16 four of them, did not receive any form of preferential
17 treatment at Nova Bank when their loans were being considered,
18 right?

19 A Correct.

20 Q Their loans were approved because, like any other person
21 who was worthy of the loan, they were worthy of the loan,
22 correct?

23 A Correct.

24 Q They were not given special consideration because anyone
25 at the bank came into your office or to the loan committee and

Patterson - Cross (Eng)

175

1 said, look, this is one of Barry's people, so we have to fudge
2 things; that never happened?

3 A No.

4 Q Let's talk a few moments about Mr. Levin's loan
5 application. You've indicated that you were aware when the
6 loan application was being processed that Mr. Levin was going
7 to be an investor in the holding company, right?

8 A Correct.

9 Q Okay. Now, we know that there was a process, and we've
10 talked a little bit about it, where information was gathered
11 to create that RAS that we've seen?

12 A Correct.

13 Q Right. And we've seen it up on the screen a million
14 times. I'm going to spare the jury from doing that again.
15 That document was put together with certain underlying
16 information that was provided from the borrower to the bank?

17 A Correct.

18 Q Okay. You had Mr. Levin's tax returns, for example,
19 correct?

20 A Correct.

21 Q You had his personal financial statements, right?

22 A Correct.

23 Q And obviously a credit check would have been run on him,
24 like any other individual?

25 A Correct.

Patterson - Cross (Eng)

176

1 Q And at the end of that, the loan package is all of this
2 information that the bank has put together, was taken around
3 for the individual consideration of the people who were going
4 to make the decision that were on the loan committee; am I
5 right about that?

6 A Yes.

7 Q And the loan committee were the five individuals that
8 we've seen their names before on -- on the RAS, and they
9 ultimately sign off on it, correct?

10 A Correct.

11 Q And you were one of the individuals on the loan committee
12 and you reviewed the information and you signed off on it?

13 A Correct.

14 Q And you reviewed all the information and you signed off
15 on the loan, knowing full well that the purpose of the loan
16 was for investment?

17 A Correct.

18 Q And you reviewed all of that and you approved the loan,
19 knowing full well that it was for investment in Nova Financial
20 Holding Company, right?

21 A Correct.

22 Q There was nothing about the fact that George Levin was
23 applying for a \$5 million loan with the intent to ultimately
24 invest that money in Nova Financial Holding that was a secret
25 at the bank, right?

Patterson - Cross (Eng)

177

1 MR. IGNALL: Objection. I think that's awfully
2 vague.

3 THE COURT: You can rephrase.

4 MR. ENGLE: Sure.

5 BY MR. ENGLE:

6 Q The -- there was absolutely nothing about the fact that
7 George Levin was known to be someone that was going to invest
8 in the holding company; there was -- there was no secret about
9 that, right?

10 A Correct.

11 Q No one was trying to say, don't tell certain people
12 around the bank about that; that never happened?

13 MR. IGNALL: Objection. This witness can --

14 THE COURT: Sustained.

15 MR. IGNALL: -- testify to what he did.

16 THE COURT: Sustained.

17 BY MR. ENGLE:

18 Q Anyone ever tell you that that issue of Mr. Levin being
19 an investor in Nova Financial Holding, subsequent to receiving
20 a \$5 million loan from the bank, needed to be kept a secret?

21 A No.

22 Q Okay. And, in fact, the way this process worked is, the
23 bank approved the loan, right?

24 A Yes.

25 Q The bank was given instructions by the borrower, Mr.

Patterson - Cross (Eng)

178

1 Levin, correct?

2 A Correct.

3 Q Those instructions came from him alone; am I right about
4 that?

5 A Correct.

6 Q Okay. So you didn't get the instructions about how he
7 was going to get his money from Mr. Bekkedam?

8 A No.

9 Q You got it from Mr. Levin himself?

10 A Correct.

11 Q Okay. And it was Mr. Levin himself who says, I want that
12 money wired from the bank to my account at Gibraltar Bank, or
13 whatever it was called, right?

14 A Correct.

15 Q And that was to his personal account?

16 A Correct.

17 Q Actually an account that he had with his wife as well, is
18 that your understanding?

19 A Yes, I guess. I don't -- I'd have to look at it, but, --

20 Q Okay.

21 A -- yes.

22 Q We'll look at that in a moment. So the choice of where
23 the money was going to go was totally up to Mr. Levin?

24 A Correct.

25 Q Just like the choice of what he was going to do with that

Patterson - Cross (Eng)

179

1 money after he received it was totally up to him?

2 A Correct.

3 Q So the transaction, the way that it worked, the -- the
4 money's here with the bank and the loan's approved, right?

5 A Yes.

6 Q The money gets wired over here to George Levin's account,
7 correct?

8 A Correct.

9 Q George Levin then does not wire the money back here to
10 the bank, right?

11 A Correct.

12 Q Because the account that it came from at the bank landed
13 with Mr. Levin and then Mr. Levin, of his own accord, sent it
14 to the holding company's escrow account, right?

15 A Correct.

16 Q Which is a completely separate location from Nova Bank,
17 where the money came from?

18 A Correct.

19 Q Okay. And during the course of June 30th, 2009, after
20 the loan was approved, one of your responsibilities was to
21 make sure that the wire went out, right?

22 A Correct.

23 Q And you were then getting instructions from Mr. Preve
24 that they were going to wire the money to the holding account?

25 A Correct.

Patterson - Cross (Eng)

180

1 MR. ENGLE: And if we could bring up Government
2 Exhibit 42. And, forgive me, has that been admitted into
3 evidence?

4 UNIDENTIFIED SPEAKER: Yes.

5 MR. ENGLE: Is it admitted? Thank you. Can we
6 publish it?

7 THE COURT: Yes, sir.

8 MR. ENGLE: Thank you, Your Honor.

9 BY MR. ENGLE:

10 Q All right. You see here with Government 42 --

11 MR. ENGLE: Lou, can we highlight the lower email
12 first?

13 Q Mr. Patterson, you see that on June 30th at approximately
14 11:12 in the morning, you get an email from Mr. Preve?

15 A Correct.

16 Q About the bank wire?

17 A Correct.

18 Q These are the wiring instructions, along with that other
19 form that we saw that Mr. Levin signed saying he wanted the
20 money wired to a particular place, right?

21 A Yes.

22 Q So this is another communication from Mr. Levin's agent,
23 Mr. Preve, if you will, right?

24 A Yes.

25 Q And he gives you specific instructions about the bank,

Patterson - Cross (Eng)

181

1 Nova Bank wiring the information to Gibraltar Bank & Trust in
2 Fort Lauderdale, Florida?

3 A Yes.

4 Q And there's routing information, and there was an account
5 number that was given to you?

6 A Yes.

7 Q All right.

8 MR. ENGLE: Lou, can we go up to the top email,
9 please.

10 BY MR. ENGLE:

11 Q Your response then is that you're going to wire the
12 funds, and then you give instructions about what you believe
13 to be the intent of Mr. Levin, right?

14 A Correct.

15 Q Now, there was no one down in Florida with a gun to Mr.
16 Levin's head to make sure that he wired the money back to Nova
17 Financial escrow that you're aware of, right?

18 MR. IGNALL: Objection. Argumentative.

19 THE COURT: Sustained.

20 BY MR. ENGLE:

21 Q Now, based upon your understanding, he was going to
22 invest in the holding company, correct?

23 A Correct.

24 Q So you provided the Nova Financial escrow account for the
25 holding company, correct?

Patterson - Cross (Eng)

182

1 A Yes.

2 MR. ENGLE: Thank you. We can take down Government
3 42. May the witness be shown Defense 1125, just for the
4 witness, please.

5 BY MR. ENGLE:

6 Q Okay. First, Mr. Patterson, do you see the first email
7 on here? Do you see that, sir?

8 A Yes.

9 Q And that was an email from Dina Gaskins on Tuesday, June
10 30th, 2009 at approximately 2:44 p.m.?

11 A Yes.

12 Q And it was to a number of individuals at the bank, is
13 that right?

14 A Yes.

15 Q Lisa Schmoke?

16 A Yes.

17 Q Who is she?

18 A Treasurer.

19 Q Treasurer of the bank. Okay.

20 A Correct.

21 Q Brian Hartline?

22 A Yes.

23 Q You?

24 A Yes.

25 Q Mr. Hanuscin?

Patterson - Cross (Eng)

183

1 A Yes.

2 Q Mr. Poliski?

3 A Yes.

4 Q Of the individuals on that list, which ones were on the
5 loan committee and signed off on the approval for Mr. Levin's
6 loan?

7 A Mr. Hartline, myself, Jeff, and Mark.

8 Q Okay. So those individuals all reviewed the loan
9 documents and approved the loan in the morning, correct?

10 A Correct.

11 Q So as of the morning, the decision had been made by all
12 the members of the committee that a loan of \$5 million was
13 going to be made to Mr. Levin, right?

14 A Yes.

15 Q That same day, those individuals that were on the loan
16 committee who had approved the loan then received an email
17 from someone working at the bank that a wire had been coming
18 in from Mr. and Mrs. Levin, right?

19 A Correct.

20 Q Okay.

21 MR. ENGLE: Now, can we go to the second page? And
22 in the middle of the page, Lou, can we blow up for Mr.
23 Patterson the middle of the page. Down a little -- down more,
24 please. Perfect.

25 BY MR. ENGLE:

Patterson - Cross (Eng)

184

1 Q Do you see that, Mr. Patterson?

2 A Yes.

3 Q All right. And what we have here is, there's an email
4 from June 30th, 2009 where you write to Mr. Preve, right?

5 A Yes.

6 Q And you indicate that the wire had been sent and should
7 be at the Gibraltar account that had been designated, correct?

8 A Yes.

9 Q And you gave a confirmation number?

10 A Correct.

11 Q And you're asking for him to let you know when the funds
12 are going to be wired to the holding company's escrow account,
13 right?

14 A Yes.

15 Q And then above that, there's a response from Mr. Preve to
16 you, is that right?

17 A Yes.

18 Q And he says that he's got it; he confirmed receipt of the
19 wire, correct?

20 A Yes.

21 Q And indicated that he would be sending it back in five
22 minutes?

23 A Correct.

24 Q And by sending it back, it wasn't being sent back to the
25 bank, it was going to the holding company, correct?

Patterson - Cross (Eng)

185

1 A Correct.

2 MR. ENGLE: Now, can we go above -- Lou, can we
3 highlight the email now above that in the string, the top of
4 the page.

5 BY MR. ENGLE:

6 Q The string of emails that we just talked about where it
7 says that the wire had gone out to Gibraltar and the money was
8 going to be wired to the holding company in five minutes, you
9 forwarded that to other people at the bank, right?

10 A Yes.

11 Q You forwarded it to Mr. Hartline?

12 A Right.

13 Q To Lisa Schmoke, the treasurer, right?

14 A Right.

15 Q And to Dina Gaskins?

16 A Correct.

17 Q Okay. So then the purpose of that was for you to let
18 them know what was going on with all of this?

19 A Correct.

20 Q All right. During the time that you sat on the loan
21 committee, Mr. Bekkedam didn't come to the loan committee to
22 pitch the loans for anyone related to Ballamor?

23 A No, he did not.

24 Q He was not involved in the process of deciding whether
25 someone got or did not get a loan?

Patterson - Cross (Eng)

186

1 A Correct.

2 Q Now, with respect --

3 MR. ENGLE: The Court's indulgence.

4 (Pause)

5 BY MR. ENGLE:

6 Q I think you were asked some questions before about the
7 issue of a loan being approved and funded in a one-day
8 turnaround. Do you recall that?

9 A Yes.

10 Q Okay. That didn't happen every day, right?

11 A No.

12 Q But it did happen before George Levin got his \$5 million
13 loan?

14 A Yes.

15 Q You would do that for other customers of the bank, right?

16 A Yes.

17 Q You would do that whether it was a big loan or a little
18 loan?

19 A Correct.

20 Q Because sometimes there were timing issues that created a
21 necessity for a loan to be turned around fast?

22 A Correct.

23 Q Just because a loan needed to be turned around fast
24 didn't mean that you cut corners on the due diligence, did it?

25 A No.

Patterson - Cross (Eng)

187

1 Q But in order to accommodate customers under certain
2 circumstances, you and others at the bank involved in the loan
3 process made sure that loans were turned around in a day?

4 A Correct.

5 Q And you were also asked about the fact that this
6 particular loan, where the money was wired out and then a
7 short time later the person decided to wire it to the holding
8 company for purposes of investing in Nova stock, that wasn't
9 something that happened every day either, right?

10 A No.

11 Q It was a little unusual?

12 A Yes, it was.

13 Q But it wasn't something that you were aware of during
14 this entire process that made you concerned, did it?

15 A No.

16 Q No one raised an issue about it of the loan committee
17 people?

18 A No.

19 Q It wasn't a concern when the loan was being approved,
20 right?

21 A Correct.

22 Q It wasn't a concern after everyone found out that the
23 5 million had been wired to the holding company escrow
24 account?

25 A Correct.

Patterson - Cross (Eng)

188

1 Q Nobody at any point in time questioned the propriety of
2 that transaction, correct?

3 A Correct.

4 Q Now, the loan for Mr. Bonomo, let's talk about that just
5 for a few minutes.

6 MR. ENGLE: Can we bring up Government Exhibit 109,
7 please. And may I ask if -- am I correct that that is in
8 evidence?

9 UNIDENTIFIED SPEAKER: Yes.

10 MR. ENGLE: May we publish it, Your Honor?

11 THE COURT: Yes, sir.

12 MR. ENGLE: Thank you. And, Lou, can we blow up the
13 middle portion of that document.

14 BY MR. ENGLE:

15 Q Mr. Patterson, you see with Government 109, I know you
16 were asked some questions about this before, but the borrower
17 is Anthony Bonomo and his wife, Mary Ellen?

18 A Yes.

19 Q And the purpose that is stated is financial investment,
20 right?

21 A Correct.

22 Q And you saw this on Government 43 when you were shown the
23 RAS for Mr. Leven (sic) -- Levin's loan, correct?

24 A Yes.

25 Q And the purpose, when it was known that someone was going

Patterson - Cross (Eng)

189

1 to use it for some type of financial investment, meant they
2 could use it to invest in a whole bunch of different things,
3 right?

4 A Correct.

5 Q They could invest in a business?

6 A Correct.

7 Q They could invest in a restaurant?

8 A Correct.

9 Q Invest in Nova Financial Holding Company?

10 A Correct.

11 Q So it's their choice what they wanted to invest it in,
12 correct?

13 A Yes.

14 Q And the approval of the loan is not tied to the nature of
15 the investment, correct?

16 A Correct.

17 Q So if I decide that I want the loan and I'm creditworthy
18 and I have enough money and you decide that I'm a good
19 candidate for the loan, if I want to invest it in a pizza shop
20 or I want to invest it in stock of, you know, IBM, that
21 doesn't matter, right?

22 A As long as it's for legal purposes.

23 Q Okay. And here, in fact, with Mr. Bonomo's loan, that
24 was \$4.5 million, correct?

25 A Yes.

Patterson - Cross (Eng)

190

1 Q And it was your understanding that part of that \$4.5
2 million was going to be used to invest in Nova Financial
3 Holding Company stock, correct?

4 A Correct.

5 Q And just like with the circumstance with Mr. Levin's
6 loan, that was not something that you were told to keep hushed
7 up around the bank?

8 A Correct.

9 Q This was something that was discussed openly, correct?

10 A Yes.

11 Q To your knowledge, it was information that was available
12 and known to the other members of the loan committee?

13 MR. IGNALL: Objection. Foundation.

14 THE COURT: Sustained.

15 BY MR. ENGLE:

16 Q You were present when there was a meeting approving this?

17 A Yes.

18 Q Other people on the loan committee were there?

19 A Yes.

20 Q Other people on the loan committee signed off on it?

21 A Yes.

22 Q At least three out of five had to agree that he should
23 get the loan, right?

24 A Correct.

25 Q At least three out of five did, correct?

Patterson - Cross (Eng)

191

1 A Correct.

2 MR. ENGLE: Can we go to the last page of this
3 document, Lou. Maybe it's not the last page of the document.
4 I apologize.

5 BY MR. ENGLE:

6 Q But you know that this got signed off on, right?

7 A Correct.

8 Q And based upon the discussions that occurred within the
9 loan committee about this, you were personally aware of the
10 fact that the other loan committee members were aware that Mr.
11 Bonomo was going to invest a portion of that money in Nova
12 Financial Holding stock, correct?

13 MR. IGNALL: Objection. I think that's somewhat
14 compound.

15 THE COURT: Sustained.

16 BY MR. ENGLE:

17 Q You were aware from your activities at the loan committee
18 that the other members of the loan committee had it known to
19 them that Mr. Bonomo was going to invest part of that money in
20 Nova Holding stock, right?

21 MR. IGNALL: Objection. I still don't think there's
22 a foundation for that.

23 THE COURT: Counsel, why don't you just ask
24 specifically if.

25 BY MR. ENGLE:

Patterson - Cross (Eng)

192

1 Q You knew that, right, Mr. Patterson?

2 A Correct.

3 Q It was discussed in the loan committee?

4 A Correct.

5 Q There were other human beings that were on the loan
6 committee there when it was discussed?

7 A Yes.

8 Q Okay. So --

9 MR. ENGLE: Let's go to Government Exhibit 304,
10 please. And I believe this was also put into evidence?

11 MR. IGNALL: Already admitted, Your Honor.

12 THE COURT: I'm sorry?

13 MR. IGNALL: I believe it's been already admitted in
14 evidence.

15 MR. ENGLE: May we publish?

16 THE COURT: Yes.

17 MR. ENGLE: Thank you, Your Honor.

18 BY MR. ENGLE:

19 Q And you saw this a little earlier, Mr. Patterson. The
20 first page of this is the promissory note for Mr. and Mrs.
21 Bonomo for their \$4.5 million dollar loan?

22 A Yes.

23 Q Okay. Mr. and Mrs. Bonomo did not get this loan simply
24 because they were clients of Ballamor Capital, right?

25 A Correct.

Patterson - Cross (Eng)

193

1 Q And they got it because they were worthy of it, correct?

2 A Correct.

3 MR. ENGLE: Now, Lou, can you highlight the top
4 portion of it, please. Perfect. All right.

5 BY MR. ENGLE:

6 Q We see who it says the borrower is, the Bonomos, correct?

7 A Correct.

8 Q And then the lender indicates it's Nova Bank?

9 A Correct.

10 Q Not Nova Financial Holdings, right?

11 A Correct.

12 Q Okay.

13 MR. ENGLE: Can we go to page 56 of the 213 pages of
14 this exhibit, please, Lou. And can we blow that up as much as
15 we -- there we go. All right.

16 BY MR. ENGLE:

17 Q Now, do you see, Mr. Patterson, where it indicates that
18 the purpose is for business, and that would include
19 investment, right?

20 A Correct.

21 Q And it says for a business investment, correct?

22 A Correct.

23 Q And it was known to you and it was your understanding
24 that a portion of this was going to be invested in the Banyon
25 fund, correct?

Patterson - Cross (Eng)

194

1 A Correct.

2 Q And that was the \$2.5 million that we see that was -- or,
3 I'm sorry, the \$2 million that says other disbursements above
4 it?

5 A Correct.

6 Q And it says outgoing wire to the Banyon Group, correct?

7 A Correct.

8 Q And to your knowledge, that was a business investment
9 that the Bonomos were making?

10 A Correct.

11 Q And the other amount of money, the 2.5 million, that says
12 deposited to account number, and it lists an account number,
13 right?

14 A Correct.

15 Q That was the Bonomos' account at Nova Bank, correct?

16 A I assume so.

17 Q Well, you were aware that they had an account --

18 A Yes.

19 Q -- at Nova, --

20 A Yes.

21 Q -- correct?

22 A Yes.

23 Q And this didn't say that the money needed to be wired to
24 some external account?

25 A No.

Patterson - Cross (Eng)

195

1 Q And by it being deposited, the only bank that you would
2 have the ability to deposit to would be your own, correct?

3 A Correct.

4 Q Okay. So you're fairly confident that in looking at
5 this, that the 2.5 million went into Mr. and Mrs. Bonomo's
6 account at Nova?

7 A Correct.

8 Q All right. And all of this happened on October 22nd,
9 2009?

10 A Correct.

11 Q Is it your understanding then at some point after October
12 2nd, 2009 (sic), Mr. and Mrs. Bonomo made the decision to buy
13 Nova Financial Holdings stock?

14 MR. IGNALL: Objection. Foundation.

15 MR. ENGLE: If he knows.

16 BY MR. ENGLE:

17 Q Do you know that?

18 A No.

19 Q Okay. You were just aware of the fact that that's what
20 was supposed to happen?

21 A Correct.

22 Q Did you hear later that in fact the Bonomos did invest
23 the 2.5 million into Nova Holding stock?

24 A I believe they did, yes.

25 Q And you learned of that subsequent to the funding of this

1 loan, right?

2 A Correct.

3 Q And you learned of that weeks later? Days later?

4 A I'd say days later.

5 Q Days later.

6 A Yeah.

7 Q Not same day?

8 A Not to my knowledge, no.

9 Q Understood.

10 MR. ENGLE: Thank you, Lou. You can take that down.

11 Q Now, with respect to --

12 MR. ENGLE: Actually, can we go to -- I'm sorry, can
13 we bring up Government 304 again. I forgot one thing. And
14 can we go to page 163 of 213. And can you blow that up,
15 please. Thanks, Lou.

16 BY MR. ENGLE:

17 Q Mr. Patterson, you see the letter here that's part of
18 this exhibit, correct?

19 A Yes.

20 Q And it's dated October 21st, 2009, is that right?

21 A Correct.

22 Q And it's to you at the bank?

23 A Yes.

24 Q And it is one day before the loan was funded to Mr. and
25 Mrs. Bonomo that we just saw on October 22nd of 2009, correct?

Patterson - Cross (Eng)

197

1 A Yes.

2 Q And there's instructions that are being given to you in
3 this letter, is that correct?

4 A Correct.

5 Q An instruction is: "Please wire today the \$2 million
6 from my line of credit to the following today." Correct?

7 A Yes.

8 Q That's referring to the line of credit that was extended
9 to the Bonomos, right?

10 A Yes.

11 Q And that full line of credit was 4.5 million, correct?

12 A Correct.

13 Q So only a portion of it then is being asked to be sent to
14 the Banyon operating account in Fort Lauderdale, Florida,
15 right?

16 A Correct.

17 MR. ENGLE: And if you go down, please, Lou.

18 Q That came from Anthony Bonomo himself?

19 A Correct.

20 Q That letter wasn't drafted or sent to you by Barry
21 Bekkedam, was it?

22 A No.

23 Q So the election of where that money that was being funded
24 to a line of credit to Mr. Bonomo was purely his decision and
25 his instructions to you?

Patterson - Cross (Eng)

198

1 MR. IGNALL: Objection.

2 THE COURT: Overruled. He can answer if he knows
3 it. If he knows.

4 A Yes.

5 Q Okay. Now, you also were asked some questions about a
6 loan to a Mr. Gallub, is that correct?

7 A Yes.

8 Q Mr. Gallub was not a client of Ballamor Capital?

9 A Correct.

10 Q Mr. Gallub was not an individual that was referred to the
11 bank by Barry Bekkedam, correct?

12 A Correct.

13 MR. ENGLE: Your Honor, if I may just check here,
14 but I believe I'm -- I don't have any further questions. May
15 I have a moment?

16 THE COURT: Surely.

17 (Pause)

18 MR. ENGLE: Your Honor, I have no further questions.
19 Thank you very much.

20 THE COURT: All right. Let's take our mid-afternoon
21 break at this time.

22 (Recess at 3:30 p.m. to 3:50 p.m.)

23 THE COURT: Good afternoon.

24 ALL: Good afternoon, Your Honor.

25 THE COURT: Mr. Engle, do you have a motion?

Colloquy

199

1 MR. ENGLE: I do, Your Honor. Your Honor, it gives
2 me great pleasure to move the admission of Meredith Lowry.
3 Meredith is a first-year associate at my firm. I have come to
4 know Ms. Lowry both through her work and her demonstration of
5 her professional ethics, and she is an individual who will
6 serve the bar of this Court very well, and I would
7 respectfully submit to the Court that she is an outstanding
8 candidate to be a member of the bar of this Court, and I would
9 ask the Court to admit her at this time.

10 THE COURT: Ms. Lowry, do you agree with that?

11 MS. LOWRY: I do agree with that.

12 (Laughter)

13 MR. ENGLE: Always agree with your boss.

14 THE COURT: It is an equally pleasurable experience
15 for me to do this because you are a graduate of Drexel Law
16 School, where I am on the advisory board. Congratulations.

17 MS. LOWRY: Thank you.

18 THE COURT: I can't wait to tell everybody else
19 about this.

20 (Laughter)

21 THE COURT: Would you please raise your right hand?
22 State your full name.

23 MS. LOWRY: Meredith A. Lowry.

24 THE COURT: And repeat after me. I swear or affirm.

25 MS. LOWRY: I swear or affirm.

Colloquy

200

1 THE COURT: That I will conduct myself uprightly.

2 MS. LOWRY: I will conduct myself uprightly.

3 THE COURT: And according to law.

4 MS. LOWRY: And according to law.

5 THE COURT: As an attorney.

6 MS. LOWRY: As an attorney.

7 THE COURT: In the United States District Court.

8 MS. LOWRY: In the United States District Court.

9 THE COURT: For the Eastern District of

10 Pennsylvania.

11 MS. LOWRY: For the Eastern District of

12 Pennsylvania.

13 THE COURT: And that I will support and defend.

14 MS. LOWRY: And that I will support and defend.

15 THE COURT: The Constitution of the United States.

16 MS. LOWRY: The Constitution of the United States.

17 THE COURT: So help me God, or I do so affirm.

18 MS. LOWRY: So help me God.

19 THE COURT: Congratulations. Welcome aboard.

20 MS. LOWRY: Thank you.

21 (Applause)

22 MR. ENGLE: Thank you, Your Honor.

23 THE COURT: Thank you, sir.

24 MS. LOWRY: Thank you, Your Honor.

25 MR. ENGLE: Much appreciated.

Patterson - Redirect (Ign)

201

1 THE COURT: You're welcome. Thank you. Good luck
2 to you.

3 MS. LOWRY: Thank you.

4 (Pause)

5 THE CLERK: All rise.

6 (Jury in at 3:55 p.m.)

7 THE CLERK: Ladies and gentlemen, we are back on the
8 record.

9 THE COURT: Good afternoon. You may be seated. You
10 may continue.

11 MR. IGNALL: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. IGNALL:

14 Q Mr. Patterson, a few minutes ago Mr. Engle asked you
15 about the importance of the purpose of the loan in evaluating
16 it. Do you remember those questions?

17 A Yes.

18 Q Is the purpose of the loan something that's on every risk
19 -- was on every risk assessment summary at Nova Bank?

20 A Yes.

21 Q Does the purpose ever matter to the loan committee when
22 evaluating a loan?

23 A Yes.

24 Q And with respect to the three loans in particular, Mr.
25 Gallub, Mr. Bonomo, and Mr. Levin, did you ever disclose the

Patterson - Redirect (Ign)

202

1 purpose of any of those loans to anyone at the FDIC?

2 A No.

3 Q Did you ever personally disclose the purpose of any of
4 those loans to the bank's auditor?

5 A No.

6 MR. IGNALL: And let's bring up Exhibit 109.

7 Q Mr. Engle asked you about Mr. Bonomo's loan.

8 MR. IGNALL: I believe this is in evidence. If we
9 go to the second page.

10 Q Does this description actually specify a particular
11 investment?

12 A No. Well, it says -- yes. Invest the funds in the
13 Banyon Group.

14 Q Mr. Engle asked you and Mr. Egan I think both asked you
15 questions about discussions you had with other people at the
16 bank concerning the purpose of -- let's start with the Levin
17 loan. Do you remember those questions?

18 A Yes.

19 Q Do you have any specific recollection of -- and I'm
20 talking about up to the time the loan was approved, June 30th
21 -- having a discussion with Mr. Poliski about Mr. Levin
22 investing in Nova Bank with the proceeds of the loan?

23 A I don't remember. I'm sure I discussed it with everybody
24 for approval.

25 Q Did you discuss the purpose of the loan?

Patterson - Redirect (Ign)

203

1 A Yes.

2 Q That it was being used for Nova Financial Holding stock?

3 A Yes.

4 Q Let me turn your attention to Exhibit 42.

5 MR. IGNALL: If we could blow up the top part of
6 this.

7 BY MR. IGNALL:

8 Q Remember Mr. Engle asking you about once Mr. Levin had
9 the money, he could do whatever he wanted with it?

10 A Yes.

11 Q As of the time that the loan committee approved Mr.
12 Levin's loan, did you understand it was for any purpose other
13 than to send it back to Nova Financial Holdings?

14 A No.

15 Q And in this email at 11:15 a.m., did you send that email
16 to Mr. Preve before disbursing the funds into Mr. Levin's
17 account?

18 A Yes.

19 Q And did you provide Mr. Preve with instructions on what
20 to do with the funds before you sent them out?

21 A Yes.

22 Q You talked to Mr. Engle about Mr. -- about Ballamor
23 clients. Do you remember that?

24 A Yes.

25 Q And what happened with their loans. Do you remember

Patterson - Redirect (Ign)

204

1 that?

2 A Yes.

3 Q If I could turn your attention to Exhibit 129.

4 MR. IGNALL: Just for the witness at this point.

5 BY MR. IGNALL:

6 Q Do you know whether Mr. Bekkedam or anyone else ever made
7 a payment for Mr. Bonomo's loan on Mr. Bonomo's behalf?

8 MR. ENGLE: Objection, Your Honor. Beyond the scope
9 of cross.

10 THE COURT: Sustained.

11 MR. IGNALL: May I approach?

12 THE COURT: Sure.

13 (Sidebar begins)

14 MR. IGNALL: Mr. Engle went into great detail about
15 Ballamor clients and how they were treated by the bank and
16 whether Mr. Bekkedam had any influence on the bank. I
17 certainly think this is relevant and follows on what Mr. Engle
18 asked on cross.

19 MR. ENGLE: Mr. Bekkedam paid Mr. Bonomo's loan out
20 of friendship for him. That's not the bank extending a
21 benefit to Mr. Bonomo, that's Mr. Bekkedam extending a benefit
22 to Mr. Bonomo. It has nothing to do with what I asked on
23 cross.

24 MR. IGNALL: Which there were certainly questions
25 about Mr. Bekkedam's role with the bank, did he ask him to do

Patterson - Redirect (Ign)

205

1 anything.

2 MR. EGAN: I don't think he's got any knowledge of
3 this whatsoever. I don't think there's any foundation for
4 this testimony.

5 MR. IGNALL: Well, I can ask --

6 THE COURT: Well, I don't want -- the question is
7 already in front of the jury and -- and I don't want you to go
8 into that, laying a foundation at this point, because I
9 frankly agree with Mr. Engle at this point.

10 MR. ENGLE: Thank you, Your Honor.

11 THE COURT: The objection is sustained.

12 (Sidebar ends)

13 THE COURT: Objection sustained. You may continue.

14 BY MR. IGNALL:

15 Q Let me turn your attention to what Mr. Egan showed you
16 actually as Defense Exhibit 212. And turn your attention to
17 page --

18 MR. IGNALL: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 Q -- 24. Remember Mr. Egan asking you questions about
21 testimony you gave previously?

22 A Yes.

23 Q And about who you told about the purpose of Mr. Levin's
24 loan?

25 A Yes.

Patterson - Redirect (Ign)

206

1 Q If you look at page 24, I --

2 MR. EGAN: Your Honor, objection.

3 THE COURT: Could I see the exhibit only at this
4 point? Is that the one you're referring to?

5 MR. IGNALL: I don't -- it's a defense exhibit, so I
6 don't have it on --

7 MR. ENGLE: I have an extra copy, Your Honor.

8 MR. EGAN: I have one, too, Your Honor.

9 (Sidebar begins)

10 THE COURT: Let's go back to -- what was the
11 question, please?

12 MR. IGNALL: My question -- all right, let me --
13 I'll explain the context and get to the question. I think Mr.
14 Egan -- if I'm on the same one, the questions were, did you
15 testify that various people knowing about the loan in the
16 context of having testified to that before, and he never
17 mentioned Mr. Poliski or Mr. Deitrich in that testimony. And
18 Mr. Egan asked specifically in the context of his prior
19 testimony if he had said that Mr. Deitrich and Mr. Poliski
20 knew the purpose of the loan.

21 MR. EGAN: Actually, Your Honor, Mr. Ignall objected
22 to my using that and I took it away and asked him the
23 questions directly and not using the transcript. That's my
24 objection. He objected to me using the transcript and you
25 sustained it and I moved on.

Patterson - Redirect (Ign)

207

1 MR. ENGLE: And he also said he didn't remember
2 testifying at deposition.

3 MR. IGNALL: I'll move on then. May I have one
4 moment, Your Honor?

5 THE COURT: Certainly.

6 (Sidebar ends)

7 (Pause)

8 MR. IGNALL: Let me bring up Exhibit 301, Government
9 Exhibit 301, page 24. And that's already been admitted, Your
10 Honor. And if we can go to page 24.

11 BY MR. IGNALL:

12 Q Do you remember this document?

13 A Yes.

14 MR. IGNALL: One moment, Your Honor.

15 THE COURT: Yes, sir.

16 (Pause)

17 BY MR. IGNALL:

18 Q Now, I believe you've said that that was your -- is that
19 your handwriting?

20 A Yes.

21 Q Did you sign this document?

22 A No.

23 Q Do you know who signed that?

24 A No.

25 Q With respect to the loan to Mr. Gallub for \$500,000, at

Patterson - Redirect (Ign)

208

1 the time of the loan were you aware of any purpose for that
2 loan other than to invest in Nova Financial Holdings?

3 A No.

4 Q With respect to Mr. Bonomo's loan, were you, at the time
5 of the \$4.5 million loan, aware of any purpose for that loan
6 other than to put \$2 million into Banyon and \$2.5 million into
7 Nova Financial Holdings?

8 A No.

9 Q Do you know what Mr. Hartline or anyone else at the bank
10 told the FDIC about those loans?

11 A No.

12 Q Were you at all involved in the bank's TARP application
13 process?

14 A No.

15 Q Mr. Engle asked you questions about funds that were sent
16 to the Nova Financial Holdings. Do you remember those
17 questions?

18 A Yes.

19 Q At what bank was the Nova Financial Holdings account
20 held?

21 A Nova Bank.

22 Q Let me turn your attention to what I believe you were
23 shown on cross is Defense Exhibit 48.

24 MR. IGNALL: And if I could ask the defense to bring
25 that up. We don't have it on our system.

Patterson - Redirect (Ign)

209

1 BY MR. IGNALL:

2 Q Do you see that document on your screen?

3 A Yes.

4 Q Do you remember questions about correcting a RAS for Mr.
5 Levin?

6 A Yes.

7 MR. IGNALL: And if we can flip to the next page.

8 Q Is the amount of the loan the same as it was originally?

9 A Yes.

10 Q And is the purpose of the loan the same?

11 (Pause)

12 Q If you like, we can --

13 MR. IGNALL: What might be easier, can I bring a
14 copy of Exhibit 43 up?

15 THE COURT: Yes, sir.

16 A It says financial investment.

17 THE COURT: Just a moment, please.

18 MR. IGNALL: Hold on, I can do it this way. I've
19 got it. May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 MR. IGNALL: If you could flip open to Exhibit 43.

22 So just so the record is clear, I'm asking the witness to look
23 at Government Exhibit 43 and Defense Exhibit 48 on the screen.
24 And if we go to the second page of Exhibit 48, Defense Exhibit
25 48. I'm looking at Defense 48. And just Defense 48 is fine.

Patterson - Redirect (Ign)

210

1 I don't know if you can -- can you do it side by side with
2 Government 43? I don't know how legible that will be, but we
3 can try that. And go to the second page of 48, please. I'm
4 sorry, it's probably the third page.

5 BY MR. IGNALL:

6 Q Is the purpose on Defense 48 the same as on Government
7 43?

8 A Yes.

9 Q All right. And is --

10 MR. IGNALL: If we can go to the next page, where it
11 says the transaction comments.

12 Q Are those the same on both documents?

13 (Pause)

14 A Yes.

15 Q All right. Now I'd like to turn your attention to
16 Exhibit -- Government's Exhibit 118.

17 MR. IGNALL: And if we can ask Agent Boyer to --
18 thank you.

19 BY MR. IGNALL:

20 Q Do you remember getting questioned on cross-examination
21 about Exhibit 118 from Mr. Egan?

22 A Yes.

23 Q Do you remember discussions about whether Mr. Levin was
24 going to post some sort of security for his \$5 million loan?

25 A Yes.

Patterson - Redirect (Ign)

211

1 Q Do you remember those questions in the context of why you
2 might want to create a new risk assessment summary?

3 MR. EGAN: Objection.

4 THE COURT: Basis.

5 MR. EGAN: Characterization of the testimony.

6 THE COURT: As testimony?

7 MR. EGAN: I'll withdraw, Your Honor.

8 THE COURT: All right.

9 BY MR. IGNALL:

10 Q Do you remember those --

11 A Yes.

12 Q -- in the context of -- of coming up with a new RAS? And
13 let me turn your attention to Exhibit 118.

14 MR. IGNALL: If we could turn to the second page.

15 Q First, is the purpose different from the risk assessment
16 summary that you approved in June?

17 A Yes.

18 Q All right. Let's go down to collateral. Does this risk
19 assessment summary talk about any collateral for this loan as
20 of October 6th, 2009?

21 A No.

22 Q Do you remember Mr. Egan asking you about Defense Exhibit
23 -- I'm sorry, loans making money for the bank?

24 A Yes.

25 Q Do you remember questions about how much the interest was

Patterson - Redirect (Ign)

212

1 going to be on Mr. Levin's loan?

2 A Yes.

3 Q And do you remember Mr. -- whether Mr. Egan asked if that
4 was money that the bank might make on Mr. Levin's loan?

5 A Yes.

6 Q Do you know if the bank actually made any money on Mr.
7 Levin's loan?

8 A I don't know.

9 Q Do you know if Mr. Levin ever paid his loan?

10 A I do not know.

11 Q Do you remember meeting with Government agents on October
12 19th, 2015?

13 MR. EGAN: Objection.

14 Q I'm sorry, on October 14th, 2015?

15 MR. EGAN: May we see Your Honor at sidebar?

16 THE COURT: Yes, sir.

17 (Sidebar begins)

18 THE COURT: Basis?

19 MR. EGAN: I think he's about to present his own
20 witness with their MLI, which are the Government's notes of a
21 meeting, and I -- before he goes down that road, I want a
22 proffer because I don't think it's proper.

23 MR. IGNALL: I'm going to impeach him with the prior
24 inconsistent statement to set it up for potentially calling
25 the Government agent as a witness.

Patterson - Redirect (Ign)

213

1 UNIDENTIFIED SPEAKER: So you us to call him
2 (inaudible)?

3 MR. IGNALL: I'm sorry?

4 MR. EGAN: You're going to impeach your own witness?

5 MR. IGNALL: Absolutely.

6 THE COURT: Okay. All right.

7 MR. EGAN: Okay.

8 THE COURT: All right.

9 (Sidebar ends)

10 THE COURT: All right. Counsel, would you repeat
11 your foundational question, please?

12 MR. IGNALL: Yes.

13 BY MR. IGNALL:

14 Q Do you recall meeting with investigating agents from the
15 Government on or about October 14th of 2015?

16 A Yes.

17 Q And do you remember meeting with Government agents
18 sometime in October? I'm not going to hold you to the day.

19 A Okay.

20 Q Do you?

21 A Yes.

22 Q Okay. Do you remember discussing with Government agents
23 that you had walked Mr. Levin's loan around to the loan
24 committee?

25 A Yes.

Patterson - Redirect (Ign)

214

1 Q Do you recall telling Government agents that you could
2 not recall whether loan committee members were told that the
3 loan was to invest in bank stock?

4 MR. EGAN: Your Honor, I'm going to renew my
5 objection. This is improper.

6 THE COURT: Sustained.

7 MR. IGNALL: May I approach at sidebar, Your Honor?

8 THE COURT: Yes. Apologies, ladies and gentlemen.

9 (Sidebar begins)

10 THE COURT: Let me ask you this in two different
11 scenarios. On the one hand, has he said in any way that he
12 does not have an instant recollection?

13 MR. IGNALL: This is not to refresh the
14 recollection.

15 THE COURT: I know that. I'm just asking has he
16 said that.

17 MR. IGNALL: He -- on direct he did. On cross, he
18 went from no recollection to yes, they definitely knew.

19 THE COURT: During your examination, has he said it,
20 or have you asked him that question?

21 MR. IGNALL: On my examination just now, he did say
22 the loan committee members knew the purpose of the loan.

23 THE COURT: In terms of the direct, I don't
24 particularly recall, on your examination.

25 MR. IGNALL: As I remember it, on direct he said he

Patterson - Redirect (Ign)

215

1 did not remember doing it. On cross he said, yes, he did.

2 And then I believe when I asked him on redirect --

3 THE COURT: Let's -- we're going to stop for the day
4 on this one.

5 MR. IGNALL: Okay.

6 THE COURT: There's too many --

7 MR. IGNALL: Okay. Well, I'll -- all right.

8 THE COURT: You can either withdraw the question and
9 wait, or we can go ahead and stop now for the day and you can
10 do this --

11 MR. IGNALL: This will be -- this is all I have,
12 that's why I didn't want to --

13 MR. EGAN: Your Honor, this is a very significant
14 issue and he's attempting to do what --

15 THE COURT: I understand.

16 MR. EGAN: -- what he's basically been trying to
17 stop us to do the whole time, which is cross people with their
18 prior inconsistent statements.

19 THE COURT: I just want to make sure -- I just want
20 to make sure that we're totally accurate in terms of evidence.

21 MR. IGNALL: That's fine.

22 THE COURT: So we have to stop now.

23 MR. IGNALL: I understand. Fine, Your Honor. Thank
24 you.

25 THE COURT: Okay.

Patterson - Redirect (Ign)

216

1 (Sidebar ends)

2 THE COURT: All right. We are going to adjourn for
3 the day. Now, what time is the parade tomorrow?

4 UNIDENTIFIED SPEAKER: 1 p.m., Your Honor.

5 THE COURT: 1:00? Oh, we'll be well underway at
6 that point in time. So we'll see you tomorrow morning at
7 9:15. Thank you very much.

8 THE CLERK: All rise.

9 (Jury out at 4:16 p.m.)

10 THE COURT: All right. You may be seated. Sir, you
11 may step down. All right. Since you'll have overnight to
12 think about this, which would include the laying of a proper
13 foundation and responses to the attempt to do this, apprise me
14 first thing tomorrow morning where you want to go with this.
15 If you can work something out, you can work something out.
16 All right?

17 MR. IGNALL: Yes, Your Honor.

18 THE COURT: Okay. Thank you. We'll see you
19 tomorrow morning. Now, let's convene tomorrow morning --
20 since the jury's going to be here at 9:15, let's convene at
21 9:10 at the latest, okay, --

22 MR. EGAN: Yes, Your Honor.

23 THE COURT: -- and try to get this one resolved.

24 MR. IGNALL: Thank you, Your Honor.

25 THE COURT: All right.

Patterson - Redirect (Ign)

217

1 MR. ENGLE: Yes, sir. Your Honor, can we just -- I
2 don't know if the Government knows right now because it didn't
3 go quite the way we expected today, but do we have some sense
4 of the plan for tomorrow?

5 MR. IGNALL: We don't. I think one of the witnesses
6 I was going to call we're probably going to put off till
7 Monday. There will probably be some variant of who we told
8 you yesterday, but we're going to scramble when we get in the
9 hallway and try and figure it out.

10 MR. ENGLE: Shoot us an email?

11 MR. IGNALL: I will send you an email, absolutely.

12 MR. ENGLE: Thank you.

13 MR. DUNCAN: Your Honor, I know Mr. Engle's also
14 driving to Villanova, so can we get an extra long lunch hour
15 around that 1:00 game time?

16 THE COURT: That's why they invented television and
17 DVRs.

18 MR. ENGLE: A couple of us here that are Villanova
19 grads.

20 THE COURT: All right. Thank you very much.

21 ALL: Thank you, Your Honor.

22 MR. ENGLE: And, Your Honor, thank you for swearing
23 in Ms. Lowry. I greatly appreciate it.

24 THE COURT: My pleasure.

25 (Proceedings concluded at 4:18 p.m.)

* * * * *

C E R T I F I C A T I O N

I, Roxanne Galanti, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

Roxanne Galanti

Digitally signed by Roxanne Galanti
DN: cn=Roxanne Galanti, o, ou,
email=dianadoman@comcast.net, c=US
Date: 2016.04.18 13:57:28 -04'00'

December 23, 2015

ROXANNE GALANTI

DIANA DOMAN TRANSCRIBING, LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	14-CR-0548
)	
vs.)	
)	
BRIAN HARTLINE and)	
BARRY BEKKEDAM,	)	Philadelphia, PA
	)	April 8, 2016
Defendants.	)	9:31 a.m.

TRANSCRIPT OF EXCERPT OF TRIAL
BEFORE THE HONORABLE C. DARNELL JONES, II and JURY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	DAVID J. IGNALL, ESQUIRE JENNIFER CHUN BARRY, ESQUIRE ASSISTANT UNITED STATES ATTORNEYS UNITED STATES ATTORNEY'S OFFICE 615 Chestnut Street, Suite 1250 Philadelphia, PA 19106
For the Defendant Brian Hartline:	PATRICK J. EGAN, ESQUIRE FOX ROTHSCHILD LLP 2000 Market Street, 10th Floor Philadelphia, PA 19107
For the Defendant Barry Bekkedam:	MICHAEL J. ENGLE, ESQUIRE GREENBLATT, PIERCE, ENGLE, FUNT & FLORES 123 South Broad Street, Suite 2500 Philadelphia, PA 19109
	RUSSELL D. DUNCAN, ESQUIRE ALLISON BAKER SHEALY, ESQUIRE SHULMAN, ROGERS, GANDAL, PORDY & ECKER, PA 12505 Park Potomac Avenue Potomac, MD 20854
	JOEL D. SCHWARTZ, ESQUIRE SHULMAN ROGERS GANDAL PORDY ECKER 12505 Park Potomac Avenue, 6th Floor Potomac, MD 20854
Audio Operator:	CARL HAUGER

Transcribed by: DIANA DOMAN TRANSCRIBING, LLC
P.O. Box 129
Gibbsboro, NJ 08026
Office: (856) 435-7172
Fax: (856) 435-7124
E-mail: dianadoman@comcast.net

Proceedings recorded by electronic sound recording; transcript
produced by transcription service

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

RECROSS

Thomas Patterson			16 (Ign)	19 (Eng)
Chuck Hunter	23 (Bar)	35 (Ega)		91 (Bar)
		47 (Dun)		
Mary Rutkowski	52 (Bar)	61 (Ega)	71 (Bar)	71 (Ega)
		68 (Sch)		
Ms. Course	74 (Bar)	95 (Ega)	114 (Bar)	
		113 (Dun)		
Mr. Gaunt	116 (Bar)	129 (Ega)	147 (Bar)	
		143 (She)		
Mr. Moretz	151 (Bar)	167 (Ega)	191 (Bar)	
		143 (She)		

RECEIVED

G-61B	E-mail from Hunter to Treasury & CPP	31	31
G-95	PADOBS 6/30/09 Examination	54	---
G-34	Letter to Nova re: Enforcement Action	82	---
G-61	Series of E-mails began by Fuentes	87	88
G-66	7/23/09 emails		123
G-100	Approval letter signed by Gaunt		128
G-89	Email with attachments		149
G-100A	Conditional approval letter		166

Colloquy

4

1 (The following was heard in open court at 9:31 a.m.)

2 THE COURT: Counsel, let's go on on the record.

3 I am in receipt of the letter brief filed by the
4 Government, Mr. Ignall, regarding the 607 impeachment of a
5 witness, including by one calling one's own witness to do
6 that, or one's own witness do that.

7 I have -- that's basic and fundamental. My question
8 simply was what exactly is it that he testified to that you
9 wished to impeach him with? And I wanted to make sure that
10 the record was clear as to what that was so I could make a
11 ruling.

12 MR. IGNALL: Yeah. May I -- may approach, Your
13 Honor?

14 THE COURT: Please. And does defense -- or did
15 defense submit anything or do you wish to submit anything?

16 UNIDENTIFIED ATTORNEY: No, Your Honor.

17 UNIDENTIFIED ATTORNEY: No, Your Honor.

18 UNIDENTIFIED ATTORNEY: What we submitted --

19 THE COURT: Thank you.

20 UNIDENTIFIED ATTORNEY: --is an accurate statement
21 of the law.

22 THE COURT: I'm sorry.

23 UNIDENTIFIED ATTORNEY: What was submitted is an
24 accurate statement of the law.

25 THE COURT: Yes. Okay.

Colloquy

5

1 MR. IGNALL: May I have one moment, Your Honor?

2 THE COURT: Yes, sir. Is this the MOI?

3 MR. IGNALL: Yes, that is the, I think, the 302 in
4 FBI terms.

5 THE COURT: Okay. Right.

6 MR. IGNALL: So that's -- let me make sure I have my
7 copy in front of me.

8 And I've asked Agent Lyons to step out while we have
9 this discussion.

10 THE COURT: Thank you. Give me -- give me just a
11 moment, please.

12 MR. IGNALL: Okay.

13 (Pause)

14 THE COURT: All right. Now -- and you all obviously
15 have a copy of this.

16 MR. IGNALL: Yes, Your Honor.

17 UNIDENTIFIED ATTORNEY: Yes, Your Honor.

18 THE COURT: What was it that he said that's
19 inconsistent with this?

20 MR. IGNALL: Well, it's -- on direct examination my
21 recollection was he said I don't have a specific recollection
22 of telling the other Loan Committee members the purpose of the
23 loan, being to buy Nova Financial Holding stock --

24 THE COURT: And where -- where in --

25 MR. IGNALL: -- when they were approving it --

Colloquy

6

1 THE COURT: Where in this did he say otherwise?

2 MR. IGNALL: He didn't.

3 THE COURT: Okay.

4 MR. IGNALL: What he said on direct was consistent
5 with what's in the 302.

6 THE COURT: Okay.

7 MR. IGNALL: On cross-examination, however, he said
8 at one point that a number of people knew, including Mr.
9 Poliski and Mr. Deitrich.

10 He also said that it was common knowledge that
11 everyone knew, and that he told the whole Loan Committee the
12 purpose of the loan at the -- at the time the loan was walked
13 around.

14 THE COURT: And you wish to impeach him with
15 these -- this statement.

16 MR. IGNALL: With this statement to say -- ask him,
17 and he can agree or -- or disagree that he said that, and then
18 if he disagrees, we can choose to call Agent Lyons if we wish
19 to complete the impeachment solely for the point of impeaching
20 the witness' testimony on that particular item.

21 THE COURT: All right. Change your mind overnight
22 or is --

23 MR. ENGLE: Your Honor, I'm going to -- I think that
24 they can confront him with does he remember being interviewed
25 on the particular day of that report. If he does not recall,

Colloquy

7

1 I think for the limited purpose of trying to refresh his
2 recollection they could show him the top portion of the
3 report, see if it refreshes.

4 If it does and -- or he does acknowledge that he
5 remembers being interviewed that day, they could ask him did
6 you say this to the agents, and if he says yes, then
7 impeachment has been completed.

8 If he says no, then the Government would need to
9 take the next step to complete the impeachment by calling the
10 agent.

11 THE COURT: All right. Disagree with that?

12 MR. IGNALL: That sounds like -- sounds like we're
13 in agreement, yes.

14 THE COURT: All right. Now, yesterday I just
15 thought that there was an objection to this.

16 MR. ENGLE: Well, there was -- think there was an
17 objection to we hadn't laid a proper foundation for the fact
18 that he even recalled being interviewed on the date.

19 It seemed like Mr. Ignall was jumping to --

20 THE COURT: All right.

21 MR. ENGLE: -- you made the following statement
22 before we had gotten the predicate --

23 THE COURT: Okay.

24 MR. ENGLE: -- that he even agreed he had been
25 interviewed at that particular time.

Colloquy

8

1 THE COURT: All right. I --

2 MR. EGAN: Yeah, the objection was to the manner in
3 which was being done.

4 THE COURT: Gotcha.

5 MR. IGNALL: Right.

6 THE COURT: All right.

7 MR. IGNALL: I think we're in agreement. Thank you,
8 Your Honor.

9 THE COURT: No harm, no foul.

10 MR. IGNALL: All right. I'm going to ask Agent
11 Lyons to stay outside for the rest of --

12 THE COURT: Fine.

13 MR. IGNALL: -- the examination of Agent Patterson
14 in case he is called as a witness.

15 MR. EGAN: And, Your Honor, I do have another
16 issue --

17 THE COURT: Yes, sir.

18 Carl, can I had this back to you for Mr. Engle,
19 please.

20 MR. EGAN: -- before we bring the jury in.

21 THE COURT: I'm sorry. I'm sorry. Thank you.

22 Yes, sir.

23 MR. EGAN: Your Honor, today we are going to have a
24 parade of -- we're not going to have a parade of Villanova,
25 we're going to have a parade of regulators. I believe at

Colloquy

9

1 least four, if not five regulators are going to testify today.

2 And none of those individuals were individuals that
3 were involved in the decision of the Investment Committee to
4 deny the TARP funds that was ultimately made in December of
5 2009.

6 THE COURT: Did they give those persons information?

7 MR. EGAN: Two of them did and three of them did
8 not.

9 THE COURT: All right.

10 MR. EGAN: To the extent that they are individuals
11 who were not involved in the ultimate determination, the
12 question whether they would have wanted to know if the money
13 that was invested was borrowed is irrelevant and improper.

14 THE COURT: Counsel.

15 MS. BARRY: Your Honor, the -- the regulators who
16 are coming, two specifically gave information to CPP Council.
17 In fact, two of them attended the June 10, 2009 CPP Council
18 meeting, and it's obviously relevant as to what was being
19 presented and what the Council decided, based on the
20 information that it received and what was meant by the \$15
21 million injection of new capital.

22 So I think that's highly relevant and probative, and
23 they should be asked the appropriate questions about --

24 THE COURT: Again, that's why I asked the question,
25 did they give information.

Colloquy

10

1 MS. BARRY: Yes.

2 THE COURT: I don't think that's an issue. I think
3 that what counsel is really talking about here are the ones
4 who didn't participate.

5 MS. BARRY: Well, then --

6 UNIDENTIFIED ATTORNEY: Correct, Your Honor.

7 MS. BARRY: Your Honor, then there's been testimony
8 elicited during the trial about Mr. Levin and his change in
9 control, and I think the application has been shown multiple
10 times.

11 And what we have established through testimony is
12 that while there are agencies that are the primary regulators
13 for the bank and then a primary regulator for the holding
14 company, that they are in communication with each other.

15 And to the extent that the concealment continues
16 with the CIC application, that is, the Change in Control
17 application, it's highly relevant about what they are telling
18 the regulators related to whether or not any of Mr. Levin's
19 funds are borrowed from the bank, and it's significant.

20 THE COURT: It would not be prohibited for those
21 persons to say they were not apprised of that fact.

22 MS. BARRY: Yes.

23 THE COURT: On the other hand, to ask them would you
24 have wanted to know that, is the problem.

25 UNIDENTIFIED ATTORNEY: That's correct, Your Honor.

Colloquy

11

1 THE COURT: And I think that's inadmissible, quite
2 frankly.

3 MS. BARRY: Well, Your Honor, to the decision of
4 whether or not they would provide -- they would have approved
5 the CIC application it's extremely relevant.

6 The information was not on any of the applications
7 for Change in Control and --

8 THE COURT: But they didn't approve it.

9 MS. BARRY: They did approve it. The Change in
10 Control was approved by both the Federal Reserve and the
11 Pennsylvania Department of Banking.

12 THE COURT: The regulators who would be called to
13 testify?

14 MS. BARRY: Yes, they --

15 THE COURT: Who did not participate?

16 MS. BARRY: They --

17 MR. EGAN: No, Your Honor, it's two different
18 things.

19 MS. BARRY: Right, there's two different --

20 THE COURT: All right.

21 MS. BARRY: There are two different issues. One is
22 CPP Council and the TARP funding --

23 THE COURT: Okay.

24 MS. BARRY: -- and the other is the entire
25 investment that Mr. Levin was going to make required a

Colloquy

12

1 submission, an application, separate application, with the
2 regulators, both the Federal Reserve and the Pennsylvania
3 Department of Banking.

4 And within those documents and representations made
5 there was no disclosure of the \$5 million loan --

6 THE COURT: Now, if the question is --

7 MS. BARRY: -- and there was an approval.

8 THE COURT: And I apologize for the interruption.
9 But if the question is had you known this factor, would you
10 have voted to approve?

11 Is that going to happen?

12 MS. BARRY: No. I'm not asking them if they were
13 going -- voting to approve the TARP funding. That's -- that's
14 not the question.

15 The question is in determining your approval of Mr.
16 Levin to take 24.2 percent, or whatever, control of the -- the
17 bank, then would you have wanted to -- was the \$5 million that
18 he borrowed from the bank an important fact that you would
19 have wanted to know.

20 It's a specific question --

21 THE COURT: As opposed -- as opposed to --

22 MS. BARRY: Your Honor, the source of funding to
23 take that control of the bank was significant and important,
24 and they asked specific questions as to the source of the
25 funds that Mr. Levin had in order to purchase \$18 million --

Colloquy

13

1 THE COURT: I understand --

2 MS. BARRY: -- worth of stock.

3 THE COURT: -- that. I'm only trying to get to that
4 question which you have, and it seems to me --

5 MS. BARRY: Well --

6 THE COURT: -- that if it was that probative and
7 that important, that they could easily say had I know that, it
8 would not have been approved.

9 MS. BARRY: Well, I think the question is going to
10 be did anyone disclose that a loan was made to purchase 5
11 million --

12 MR. EGAN: And --

13 MR. IGNALL: -- of the \$18 million. The answer will
14 be no.

15 MR. EGAN: And, Your Honor, to your point, the next
16 question is a hypothetical --

17 THE COURT: That's --

18 MR. EGAN: -- which is would you have known --

19 THE COURT: That's where -- that's all I'm focusing
20 on. That's all I'm --

21 MR. EGAN: And it is entirely hypothetical because
22 none of them are going to say what their decision would be one
23 way or the other --

24 THE COURT: That's my --

25 MR. EGAN: -- had they known.

Colloquy

14

1 THE COURT: That's where -- that's all I'm focusing
2 on, is that hypothetical, because everything else I think is
3 admissible.

4 MR. SCHWARTZ: Your Honor --

5 THE COURT: Yes. Excuse me. Yes, sir.

6 MR. SCHWARTZ: I beg your pardon. Two factual
7 points and two little questions with regard to that.

8 The factual points are the attendance of this -- the
9 June 10th meeting shouldn't matter or make these witnesses
10 relevant because it wasn't until June 30th that the
11 information about Mr. Levin's loan came into play, I believe.

12 Secondly, all this talk about getting -- putting on
13 witnesses about the Change in Control is only going to confuse
14 the jury because there's no -- the Government, I don't
15 believe, has introduced evidence that the information about
16 the Change in Control application was ever communicated to the
17 TARP decision makers, the -- the CPP or the Investment
18 Committee in the CPP.

19 So the more we go down the road, the more the jury's
20 going to be thinking, well, wait a minute. What are we
21 talking about, whether the -- the Change in Control
22 documentation was done correctly or whether the -- the TARP
23 application was done correctly, and --

24 THE COURT: As I did.

25 MR. SCHWARTZ: I'm sorry?

Colloquy

15

1 THE COURT: As I just did.

2 UNIDENTIFIED ATTORNEY: As I just did.

3 MR. SCHWARTZ: Right. I mean it's -- and I'm sorry,
4 I didn't mean to point out -- and the -- it's very confusing
5 and -- and --

6 THE COURT: You're an advocate. You better do your
7 job.

8 MR. SCHWARTZ: Well, but the -- the less we get into
9 that and the less we get into what's extraneous information,
10 the easier it is going to be for the jury to decide.

11 The legal points are --

12 THE COURT: So go back -- going back to the
13 hypothetical, which is his counsel's point, let me just ask
14 counsel for the Government and perhaps shortcut this.

15 That one question, I'm not going to allow you to
16 have an exception. All right.

17 MS. BARRY: Thank you, Your Honor.

18 MR. IGNALL: Thank you, Your Honor.

19 MR. SCHWARTZ: Your Honor, does -- does that --

20 THE COURT: You won, Counsel.

21 MR. SCHWARTZ: I'm sorry.

22 MR. EGAN: Yeah, that means stop.

23 MR. SCHWARTZ: Very well. Thank you, Your Honor.

24 THE COURT: All right. Thank you.

25 Are we ready? All right.

Patterson - Continued Redirect (Ign)

16

1 MR. IGNALL: Your Honor, can we ask for a
2 two-minute --

3 THE COURT: Sure.

4 MR. IGNALL: -- break, and we'll be right back?

5 THE COURT: Absolutely.

6 MR. IGNALL: And we'll bring the witness in right
7 now.

8 (Pause)

9 MS. BARRY: Thank you, Your Honor.

10 THE COURT: All right. Okay. Ready?

11 THE CLERK: All rise.

12 (Jury in, 9:47 a.m.)

13 THE COURT: Good morning. You may be seated.

14 Counsel, you may continue.

15 MR. IGNALL: Thank you.

16 THOMAS PATTERSON, GOVERNMENT'S WITNESS, PREVIOUSLY
17 SWORN

18 CONTINUED REDIRECT EXAMINATION

19 BY MR. IGNALL:

20 Q Good morning, Mr. Patterson.

21 A Good morning.

22 Q Mr. Patterson, do you remember if you were interviewed by
23 Government agents in -- sometime in October of last year,
24 2015?

25 A Yes.

Patterson - Continued Redirect (Ign)

17

1 Q All right. And do you remember talking about the
2 approval of the loan to Mr. Levin when you were talking to
3 Government agents?

4 A Yes.

5 Q All right. And, in particular, did you tell Government
6 agents during that interview that you could not recall if the
7 Loan Committee members were told that the loan was for Mr.
8 Levin to invest in bank stock?

9 A Yes. I --

10 Q Did you -- do you recall saying that?

11 A I -- yes.

12 Q And do you recall telling Government agents that you had
13 no first-hand knowledge if anyone else at the bank knew the
14 purpose of the loan to Mr. Levin?

15 A Correct.

16 Q Do you recall saying that?

17 A Yes.

18 Q And do you recall saying that you thought that David
19 Deitrich may have known the purpose of Mr. Levin's loan, but
20 you couldn't be sure?

21 A Correct.

22 Q All right. And you did say that?

23 A Yes.

24 Q And is that still true today?

25 A Well, I believe all of the Loan Committee knew of the

Patterson - Continued Redirect (Ign)

18

1 loan to Mr. Levin for the purchase of -- to invest capital in
2 the holding company.

3 Q But is it true that you told Government investigators
4 back in October that you could not say for sure if anyone knew
5 about the purpose --

6 A Yes.

7 Q -- of Mr. Levin's loan?

8 A Yes.

9 Q You were asked some questions on cross-examination about
10 Mr. Levin potentially assuming a loan of Mr. Bekkedam's. Do
11 you remember those questions?

12 A Yes.

13 Q Do you know if Mr. Levin ever assumed that loan?

14 A I don't -- I don't remember.

15 Q Do you know if Mr. Levin ever got a loan from Nova Bank,
16 other than the June 30th loan we've talked about?

17 A I don't believe so.

18 Q You remember me asking some questions about that Mr.
19 Bonomo could use the loan funds for anything he wanted?

20 A Yes.

21 Q Do you -- did you have any discussions with Mr. Bonomo
22 about that?

23 A No.

24 Q Do you have any first-hand knowledge about what Mr.
25 Bonomo's intentions were?

Patterson - Recross (Eng)

19

1 A No.

2 MR. IGNALL: All right. Nothing further.

3 MR. EGAN: I have no further questions, Your Honor.

4 MR. ENGLE: May I briefly?

5 THE COURT: Yes, sir.

6 RECROSS-EXAMINATION

7 BY MR. ENGLE:

8 Q Good morning, Mr. Patterson.

9 A Good morning.

10 Q Mr. Patterson, you were asked a couple questions on
11 redirect yesterday about where the Nova Financial Holding
12 Company had its escrow account.

13 Do you recall that?

14 A Yes.

15 Q And they had it at Nova Bank, right?

16 A Yes.

17 Q Nova Financial Holding Company was like any other
18 customer of the bank. They had an account there, right?

19 A Yes.

20 Q And whatever money was put into that account didn't
21 belong to Nova Bank, it belonged to Nova Financial Holding
22 Company, correct?

23 A Correct.

24 Q And the bank couldn't access and do anything with that
25 money in an inappropriate way like any other customer's

Patterson - Recross (Eng)

20

1 account, right?

2 A Correct.

3 Q Okay. Now, you were also asked about a conversation you
4 had with Government agents this past October, right?

5 A Yes.

6 Q And that was an interview where you were there by
7 yourself?

8 A Correct.

9 Q Didn't have a lawyer there with you.

10 A No, I did not.

11 Q And you were there as part of the ongoing cooperation
12 that you were engaged in with the Government, is that right?

13 A Correct.

14 Q And you knew what information the Government wanted to
15 hear from you, right?

16 MR. IGNALL: Objection.

17 MR. ENGLE: Well --

18 MR. IGNALL: Beyond the scope of the redirect.

19 MR. ENGLE: Your Honor, they just inquired into the
20 statement that was made and what he --

21 THE COURT: All right.

22 MR. ENGLE: -- told the agents. I believe it's
23 appropriate.

24 THE COURT: Overruled.

25 BY MR. ENGLE:

Patterson - Recross (Eng)

21

1 Q You knew what the Government was looking for when they
2 were talking to you, right?

3 A Yes.

4 Q You knew what they were trying to prove in this case,
5 correct?

6 A Yes.

7 Q And you were telling them what they wanted to hear, isn't
8 that right?

9 A I was telling what I knew.

10 Q Okay. And yesterday you were in Court under oath in
11 front of this jury, right?

12 A Correct.

13 Q And you knew what that oath meant, correct?

14 A Correct.

15 Q You swore an oath to tell the truth, subject to the
16 penalties of perjury?

17 A Correct.

18 Q You knew that lying would subject you potentially to
19 prosecution for perjury?

20 A Yes.

21 Q That would be separate and apart from what you've already
22 been prosecuted for, correct?

23 A Correct.

24 Q And you don't want to go back to jail, right?

25 A No, I do not.

1 Q You certainly were not going to lie to this jury
2 yesterday.

3 A Correct.

4 Q So when I asked you all those questions about the Loan
5 Committee people knowing the purpose of Mr. Levin's loan to
6 invest in Nova Financial Holding Company, you were telling the
7 truth then, weren't you?

8 A Yes.

9 Q And when you were asked on redirect by Mr. Ignall that
10 same question and you gave him the same answer, you were
11 telling the truth then, weren't you?

12 A Yes.

13 Q And you're telling the truth here today that that is in
14 fact what happened?

15 A Yes.

16 Q The Loan Committee members knew?

17 A Correct.

18 Q Thank you.

19 MR. IGNALL: Nothing further, Your Honor.

20 THE COURT: Thank you, sir. You may step down.
21 Watch your step, please.

22 THE WITNESS: Thank you.

23 THE COURT: You may call your next witness.

24 MS. BARRY: Thank you, Your Honor.

25 United States calls Chuck Hunter.

Hunter - Direct (Bar)

23

1 CHUCK HUNTER, GOVERNMENT'S WITNESS, SWORN

2 THE CLERK: Please state and spell your name for the
3 record.

4 THE WITNESS: Chuck Hunter, C-H-U-C-K H-U-N-T-E-R.

5 THE CLERK: Thank you.

6 THE COURT: You may proceed.

7 MS. BARRY: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MS. BARRY:

10 Q Good morning, Mr. Hunter.

11 A Hi.

12 Q Where do you work?

13 A The Federal Deposit Insurance Corporation.

14 Q And is that sometimes referred to as the FDIC?

15 A Yes.

16 Q And how long have you been with the FDIC?

17 A For about 26 years.

18 Q And what is your current position?

19 A I'm a senior financial analyst.

20 Q And in and around 2008 or 2009 were you detailed to any
21 specific area for the FDIC?

22 A Yes, I was. I was detailed to our efforts in association
23 with TARP, Troubled Asset Purchase Program.

24 Q Okay. And what was your role in the Troubled Asset -- or
25 TARP or the -- is it the Capital Purchase Program?

Hunter - Direct (Bar)

24

1 A Capital Purchase Program, yes.

2 Q Okay. And so what was your role?

3 A I was a intermediary between regional offices and banks
4 and TARP CPP, Capital Purchase Council.

5 Q Okay. And what was the CPP? Who comprised or made up
6 the CPP?

7 A A senior representative from each of the federal banking
8 agencies, of the four federal banking agencies at that time,
9 and one representative from the U.S. Treasury Department.

10 Q Now, in and around 2009 do you know whether or not a bank
11 called Nova Bank made an application for CP -- to the CPP for
12 TARP funding?

13 A Yes, I'm aware of that.

14 Q Okay. And do you know who the primary regulator for Nova
15 Bank was?

16 A The FDIC.

17 Q Okay. So did you have a role in the application process
18 or in the CPP decision making for Nova Bank?

19 A I had a role in forwarding information from our regional
20 offices and/or the bank to the CPP Council.

21 Q Okay. And as an intermediary if CPP Council had any
22 questions about Nova Bank, would you relay that -- those
23 questions to the field office?

24 A Yes, I would, to the regional office staff.

25 Q And who was your main contact for the regional office

Hunter - Direct (Bar)

25

1 related to Nova Bank?

2 A Lisa Koch, who was the acting case manager, I believe.

3 Q Now, once -- from the outset did CPP Council have
4 concerns about Nova Bank?

5 A Yes, they did.

6 Q Okay. And in terms of your understanding on monies or
7 funds that would be provided by TARP or investments that TARP
8 was going to make into these banks that came before the CPP
9 Council what was one of the important things that the CPP
10 Council wanted to establish about the bank itself?

11 A That the bank was viable without TARP funds.

12 Q Okay. And the initial issues that CPP Council had with
13 Nova Bank, did you communicate those concerns with Lisa Koch?

14 A Yes, I did.

15 Q And in response did Lisa Koch provide you information to
16 address those concerns?

17 A Yes, she did.

18 Q And where -- where did you believe she was receiving that
19 information?

20 A I thought she was receiving the information from the --
21 from the bank.

22 Q Okay. And was it your expectation that the bank was
23 providing true and accurate information?

24 A That was my assessment, yes.

25 Q Now, during the time that CPP Council was considering

Hunter - Direct (Bar)

26

1 Nova Bank's TARP application do you know whether or not there
2 were issues with Nova Bank's capital levels?

3 A Yes, there were.

4 Q Okay. And did you -- did you tell Lisa Koch what those
5 concerns were?

6 A Yes, I did.

7 Q And did she provide information responding to those
8 concerns?

9 A Yes, she did. She provided the bank's plan for raising
10 capital.

11 Q Okay. Now, I believe that this has been previously --
12 previously admitted into evidence, Government's Exhibit 21.

13 THE CLERK: Yes.

14 MS. BARRY: May it be published, Your Honor?

15 THE COURT: Yes.

16 BY MS. BARRY:

17 Q If you take a look at Government's Exhibit 21, the bottom
18 e-mail from Lisa Koch to you, do you see that?

19 A Yes, I do.

20 Q And in this e-mail what does she say in the second
21 sentence that starts with "By the way"?

22 A "By the way" --

23 Q If you could -- you can go ahead and read it.

24 A "By the way, President Hartline left me a message that
25 they have an individual who wants to invest \$15 million into

Hunter - Direct (Bar)

27

1 the bank, ultimately."

2 Q Okay. And --

3 MR. ENGLE: Your Honor, I'm sorry. We're having a
4 little --

5 UNIDENTIFIED ATTORNEY: Our monitors aren't -- if we
6 just --

7 THE COURT: Sure, take your time.

8 UNIDENTIFIED ATTORNEY: -- fix that before we move
9 on .

10 THE COURT: Yes.

11 UNIDENTIFIED ATTORNEY: Sorry for that.

12 (Pause)

13 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

14 THE COURT: You may continue.

15 BY MS. BARRY:

16 Q Okay. And this information about the \$15 million -- or
17 the investor who would invest 15 million into the bank, was
18 that a way to address the issues the CPP Council had with Nova
19 Bank's capital levels?

20 A Yes. That is what I represented to the Council.

21 Q Okay. And so in response to Ms. Koch, do -- what do you
22 say in terms of information about this individual who wants to
23 allegedly invest \$15 million?

24 A I'm sorry, I don't quite understand.

25 Q If you could, just, if you would, please, read what you

Hunter - Direct (Bar)

28

1 wrote in the second bullet point there. Well --

2 A "The status of the bank's -- the status of the bank's
3 effort to raise capital, including as much information as
4 possible on the likely investor, the types of instruments
5 likely to be used, et cetera."

6 I'm -- I'm asking Lisa to provide me more
7 information on the investor.

8 Q Okay. And how about if you read the -- the paragraph
9 below the bullet points?

10 A "I will phone or e-mail you tomorrow with more specifics,
11 but in the interim it will be in the bank's best interest
12 to provide as much information on the \$15 million
13 investor as possible. If we can present strong evidence
14 that the bank has attracted that much in private capital,
15 all other issues become more manageable. For example,
16 with the additional 15 million in capital proper risk
17 rating of the sub-investments would not cost the capital
18 deficiency. The ACC, that is, adversely classified
19 ratio, could decline earnings ability to service TARP,
20 plus trust preferred securities could become less of an
21 issue."

22 Q Okay. And so this information to the CPP Council was
23 important to get before them in approving the TARP?

24 MR. EGAN: Objection, leading.

25 THE COURT: Sustained.

Hunter - Direct (Bar)

29

1 BY MS. BARRY:

2 Q Was this information important to get to the council, in
3 your -- in your role as an intermediary?

4 A Yes, it was essential.

5 Q Okay. And in fact you write in that first sentence, "I'm
6 not going to take this case before Council this week, rather,
7 I'm hoping to be ready by Friday so the case can be presented
8 next week."

9 So what -- what did you mean there?

10 A There I meant just give me as much information, and we
11 could take it to the next Council --

12 Q Okay.

13 A -- principally because with the condition of the
14 application at that point I didn't think it would be approved
15 by TARP -- by the CPP.

16 Q Now, when you presented the information to the CPP
17 Council on June 10, 2009, what was the decision that was --
18 was made at the time?

19 A The decision was that the application could be approved,
20 contingent upon the bank securing the \$15 million capital
21 investment.

22 Q And at that -- at that Council meeting did you provide
23 information that Nova Bank had an individual who was willing
24 to invest at least \$15 million?

25 A Yes, I did.

Hunter - Direct (Bar)

30

1 Q Now, were you made aware at any point in time that after
2 June 10, 2009, so after CPP approved with the \$15 million
3 contingency, that new capital had come into the bank?

4 A Yes. I got an e-mail sometime thereafter, before June
5 30, I believe, saying that five million of the 15 million had
6 been acquired.

7 Q All right. And if --

8 MS. BARRY: This, I believe, has been moved into
9 evidence, Your Honor, and if it may be published, Government's
10 Exhibit 57.

11 THE COURT: Granted.

12 MS. BARRY: Okay. And if we could just blow it up
13 so it's a little easier to read. Okay.

14 BY MS. BARRY:

15 Q And so who is sending you this e-mail?

16 A Lisa Koch sent me this e-mail.

17 Q And what does she say?

18 A She says she just wanted to let me know that Nova got
19 five million of the capital infusion on June 30, 2009.

20 Q And did there come a time where you passed along
21 information about this -- about the \$5 million coming in to
22 this -- to Treasury?

23 A Yes.

24 Q Okay. And I'd like you now --.

25 MS. BARRY: And if it could just be to the witness,

Hunter - Direct (Bar)

31

1 and may I approach the witness with a hard copy, Your Honor?

2 THE COURT: Yes.

3 BY MS. BARRY:

4 Q Like to show you what's been marked as Government's
5 Exhibit 61B.

6 And, Mr. Hunter, what is 61B?

7 A This is an e-mail from myself to Bill Baxter, who was one
8 of our representatives on the Council, Mario Fuentes, who is
9 with Treasury Department, I believe, and to the CPP
10 management.

11 Q Okay. And is this in response to an e-mail that was
12 forwarded to you?

13 A Yes.

14 Q Okay.

15 MS. BARRY: Your Honor, the Government moves for the
16 admission of Government's Exhibit 61B.

17 UNIDENTIFIED ATTORNEY: No objection.

18 UNIDENTIFIED ATTORNEY: No objection.

19 THE COURT: Granted.

20 MS. BARRY: Okay. And if we could publish that,
21 Your Honor.

22 THE COURT: Granted.

23 BY MS. BARRY:

24 Q Okay. And if we could please turn to the second page of
25 61B.

Hunter - Direct (Bar)

32

1 And were you forwarded the bottom e-mail from Mario
2 Fuentes?

3 A Yes.

4 Q Okay. And let's take a look at the e-mail from Mario
5 Fuentes.

6 A Okay.

7 Q Okay. And can you read what -- what Mr. Fuentes says
8 there?

9 A He says, The CPP team is in the process of reviewing the
10 TARP application for Nova Financial Holding Company, Inc. --

11 THE COURT: Sir, I'm sorry. Could you read into the
12 microphone.

13 THE WITNESS: I'm sorry.

14 "The CPP team is in the process of reviewing the
15 TARP application for Nova Financial Holding Companies,
16 Inc. As part of that review it was revealed that the
17 bank holding company was in the process of obtaining a
18 new investor who preliminarily committed to invest up
19 to -- oh, excuse me -- invest -- of an investment of at
20 least 15 million and as much as 40 million."

21 BY MS. BARRY:

22 Q Okay. And if we could go -- scroll down. And what is
23 that, the first request there at the bullet point?

24 A "Please confirm if the bank holding company has received
25 the above-referenced investment, including" --

Hunter - Direct (Bar)

33

1 Q And if we can go to the next page, please.

2 A -- "the amount of the investment, the date of the
3 investment, how much of investment has been injected to the
4 subsidiary bank. Describe the organization's capital plans
5 with respect to the above investment."

6 Q Okay.

7 THE COURT: With receipt of the above investment.

8 THE WITNESS: Yes, I'm sorry.

9 BY MS. BARRY:

10 Q "And then to please forward the responses to CPP
11 management," right?

12 A Yes.

13 Q Okay. And so you were forwarded this e-mail.

14 And then did you respond to that e-mail with the
15 information that you had at the time?

16 A Yes, I did.

17 MS. BARRY: And may we go to the first page, please?

18 BY MS. BARRY:

19 Q And so what did you write in response to the information
20 that was being sought by Treasury? And if you could read it,
21 please.

22 A. "The investor purchased five million in common stock of
23 Nova Financial Holding, and 100 percent of the -- and 100
24 percent was injected into Nova Bank as of June 30, 2009,
25 returning the bank to well-capitalized. The remainder of

Hunter - Direct (Bar)

34

1 the 15 million will be purchased upon notice of
2 contingent TARP CPP approval for -- from Treasury.
3 Management plans to inject 70 percent of the investor's
4 capital into the bank and retain more -- no more than 30
5 percent at the holding company for debt servicing.
6 Between TARP and the investor's contribution --
7 investor's contribution and the bank holding company
8 capital levels are expected to be strong. As the growth
9 is expected to be moderate after -- after the 2008
10 acquisition of Pennsylvania Business Bank which has been
11 merged into Nova Bank, no other bank acquisitions are
12 currently planned. Capital raising efforts are being
13 performed with the assistance of Ballamor Capital
14 Management, Radnor, PA."

15 Q Okay. Did anyone advise you that the \$5 million that had
16 been injected into the bank was money that was borrowed from
17 the bank?

18 A No.

19 Q Is that information that you would have shared with CPP
20 Council or with Treasury?

21 A Yes, I would have -- I would have shared that
22 information.

23 MS. BARRY: Can I have a moment, Your Honor?

24 THE COURT: Surely.

25 (Pause)

Hunter - Cross (Ega)

35

1 BY MS. BARRY:

2 Q And looking at Government's Exhibit 61B, what is the date
3 of your e-mail?

4 A Sent July 17, 2009.

5 Q Okay.

6 MS. BARRY: No further questions, Your Honor.

7 THE COURT: You may cross-examine.

8 MR. EGAN: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. EGAN:

11 Q Good morning, Mr. Hunter.

12 A Hi.

13 Q Mr. Hunter, you are -- let's focus in on the -- the dates
14 and -- that matter here.

15 You were in the year 2009, I think you said, tasked
16 to the CPP project, would that be a good way of putting it?

17 A Detailed, so yes.

18 Q Detailed. That was the word. Thanks.

19 And your job, as I understand it, was to take the
20 information that you got from the field office and pass that
21 information on to the CPP Council, correct?

22 A That would be correct.

23 Q Okay. And after -- so basically -- let me see if I got
24 it straight -- information goes from the bank to the field
25 office, right?

Hunter - Cross (Ega)

36

1 A Generally, yes.

2 Q Then from the field office to you.

3 A Yeah -- yes.

4 Q Then from you to the CPP Council.

5 A Yes.

6 Q And now, these are these folks who met on June 10th and
7 had their -- gave their recommendation, right?

8 A Yes.

9 Q Okay. And then from them it goes on to Treasury.

10 A By -- what -- what do you mean by information? What
11 information are we talking about here?

12 Q Okay.

13 A The information from me or information -- the application
14 has got a lot more information than just what I pass on to the
15 Council.

16 So Treasury gets the information actually much
17 sooner than -- than it comes from me.

18 Q Okay. Are you talking about the TARP application?

19 A I'm talking about the application, yes.

20 Q The application itself.

21 A That's right.

22 Q And that had more information than you passed on to --

23 A That has financial information of the bank's condition at
24 the time of the initial application.

25 Q Okay. Right. And I'm just trying to sort of get the

Hunter - Cross (Ega)

37

1 chain of how this flows right now. Okay?

2 A Uh-huh.

3 Q So you give your information -- you summarize your
4 information. You go to basically a meeting of the CPP Council
5 and summarize your information, isn't that what happened?

6 A Yes, that's -- that's typically true.

7 Q Okay. So there's a meeting. The four people who are
8 going to make a decision whether to recommend this goes
9 further up the chain are there, right?

10 A Yes.

11 Q You come on behalf of the FDIC to present this --
12 basically the situation to them, right?

13 A Generally that's true.

14 Q Right? Then they make a vote whether to recommend that
15 it goes on to Treasury, right?

16 A Yes.

17 Q And then Treasury has to also then make a decision
18 whether they want to do it, right?

19 A I believe that is the case, yes.

20 Q Okay. You don't really know what happens at Treasury?

21 A I don't know everything that happens at Treasury, no.

22 Q Okay. So do -- you're not familiar with something called
23 the Investment Committee?

24 A I'm -- I'm familiar that there is such a thing.

25 Q Okay. And you know the Investment Committee makes the

Hunter - Cross (Ega)

38

1 ultimate decision whether approve or not?

2 A I don't know who makes the ultimate decision.

3 Q Okay. And you don't really have any idea what
4 information actually got to that Investment Committee, do you?

5 A I'm on the committee with the information that I sent to
6 the CPP Council, and I believe that information was sent on to
7 Treasury.

8 Q But you don't actually know that, correct?

9 A Actually, I do, because one of the e-mails that we just
10 went over has Treasury representatives on there. So I'm -- I
11 do know that they got the information that I presented.

12 Q I'm not suggesting that Treasury didn't get the
13 information, but you don't know what information after
14 Treasury got it they ultimately presented to the Investment
15 Council, correct?

16 A No. That's true.

17 Q That's all I was trying to establish.

18 So this is a little bit like whispering down the
19 lane, isn't it?

20 A I don't know what that means.

21 Q Okay.

22 UNIDENTIFIED ATTORNEY: Some of us are just older.

23 MR. EGAN: If we could have Government's Exhibit 10,
24 and I believe this has been admitted.

25 THE WITNESS: I don't have Government's --

Hunter - Cross (Ega)

39

1 BY MR. EGAN:

2 Q It's going to show up in a second.

3 A Okay.

4 Q That's an e-mail from you to Lisa Koch, correct?

5 A Yes.

6 Q And this is back in February, right?

7 A Yes.

8 Q And Lisa is the person who was funneling information to
9 you, right?

10 A That would be right.

11 Q And you have three questions here, right?

12 A Yes.

13 Q And they're --

14 A Have three bullet points there.

15 Q You're relaying back to her the three things that you
16 were told were important to the people at the CPP on this
17 Council?

18 A I was relating to Council's concerns, yes.

19 Q Right. And those concerns are, one is capital,
20 obviously, right?

21 A Yes.

22 Q And the other two -- well, the next one is asset quality,
23 earnings and liquidity, correct?

24 A Yes.

25 Q And you're familiar with this Camels rating.

Hunter - Cross (Ega)

40

1 A Fairly so.

2 Q And those are all buckets in the Camels rating, right?

3 A Asset quality, earning and liquidity are Camel ratings.

4 Q Right. And then the last one has to do with asset
5 ratios?

6 A Yes.

7 Q So you ask these questions of her, and you got a response
8 on all of them, didn't you.

9 A (No audible response)

10 Q Well, if we could have Government's 11 --

11 A The pivotal -- the pivotal concern was to --

12 Q Well, sir, just -- we're getting the Government's 11 up.

13 A Okay.

14 Q And my only question to you was did you get an answer to
15 your questions.

16 And I think if you see Government's 11, you'll see
17 that you did, right?

18 A Okay. I got a response on capital. I needed to read a
19 little further.

20 Q Sure. And -- and --

21 MR. EGAN: Can I approach, Your Honor?

22 THE COURT: Yes, sir.

23 THE WITNESS: You can have this hard copy and just
24 look through it quick

25 BY MR. EGAN:

Hunter - Cross (Ega)

41

1 Q All I really wanted to ask you was just she answered all
2 your questions?

3 A Okay. Yes, I agree.

4 Q Okay. And then, obviously, there were more questions,
5 right, because the Council didn't -- that was back in
6 February. The Council didn't meet and recommend approval
7 until June, right?

8 A Yeah. Well, essentially, I would describe the
9 circumstance as this information was not sufficient to address
10 the Council's concerns.

11 Q Okay. So they wanted more information.

12 A They wanted a stronger indication that the bank would
13 remain viable.

14 Q Right, because that's what really this is about, is the
15 bank and it remain viable, right?

16 A That's right.

17 Q They want them to be around for a couple more years so
18 that they can pay back the TARP, right?

19 A That would be a good thing.

20 Q So they would want them around till like at least 2012 so
21 they could pay back the TARP, right?

22 MS. BARRY: Objection.

23 THE COURT: Sustained.

24 BY MR. EGAN:

25 Q If we could turn to Government's 21. You were shown this

Hunter - Cross (Ega)

42

1 on direct.

2 And this is where Lisa Koch sends you an e-mail and
3 says, "By the way, President Hartline left me a message that
4 they have an individual who wants to invest 15 million into
5 the bank."

6 You see that?

7 A I do.

8 Q And that's May 26, 2009.

9 And you say in response, "It would be in the bank's
10 best interest to provide me as much info on that \$15 million
11 investor as possible," correct?

12 A I do.

13 Q And then you go on to talk about the things that that
14 would help out at the bottom, proper risk weighting of the
15 sub-investments would not cause a capital deficiency.

16 That's this OTTI issue that came up, right?

17 A That's right.

18 Q The ACACR could decline. See all that?

19 A Yes.

20 Q Okay. Now, you're not sitting there with a financial
21 analysis of the bank in front of you when you're writing this
22 e-mail, correct?

23 A I don't know exactly what I was looking at at the time.

24 Q Well, you certainly weren't like plugging in \$15 million
25 and crunching numbers and saying this is going to be exactly

Hunter - Cross (Ega)

43

1 how it turns out, right? I mean you're just basically saying
2 15 million's going to help.

3 A Actually, I'm saying a little more than that. I'm saying
4 that based on the ratios that currently exist if you plug \$15
5 million of additional capital into those ratios, here's what
6 the ratios would be.

7 Q Right.

8 A Or their ratios would be at least put the bank into a
9 bucket that would make their capital appear viable.

10 Q Okay. And Lisa Koch sends you information about the
11 investor, doesn't she?

12 A Yes, that's -- that -- yes, she did. She --

13 Q And among the information she sends you --.

14 MR. EGAN: And if we could have G-22.

15 BY MR. EGAN:

16 Q If you could take a look at this e-mail, sir.

17 MR. EGAN: And if we could blow up the top part.

18 BY MR. EGAN:

19 Q Do you know if Lisa Koch ever forwarded this to you?

20 I don't have a -- an e-mail evidencing that she did.
21 So could you take a look at it and let me know?

22 A This appears to be information I'm familiar with or that
23 I had seen. I don't know if this particular e-mail was
24 forwarded to me or not.

25 Q Okay. So you knew -- and this was May 26th. And on May

Hunter - Cross (Ega)

44

1 26th you were told that he was -- wanted to invest 15 million,
2 correct?

3 A That's what this e-mail says, yes.

4 Q Right. But that it had to do with this DVFG thing,
5 right? You see that?

6 A I'm reading it now.

7 Q Do you remember that?

8 A I do not remember that.

9 Q Okay. Do you remember there were a number of
10 contingencies involved on this \$15 million?

11 A The only contingency that I was familiar with is that the
12 investor wanted contingent TARP approval, was the only
13 contingency that I was aware of.

14 Q So Lisa Koch didn't tell you that the \$15 million
15 investment was contingent upon a DVFG closing?

16 A I don't -- I'm not aware that she did, no. But the -- it
17 is in this e-mail, so --

18 Q Okay. So -- and that would explain --

19 MR. EGAN: If we could to Government's 30.

20 BY MR. EGAN:

21 Q When you appeared at the -- oh, and, sir, I'm sorry.

22 Government's 30, do you recognize that?

23 A Yes, that's the Council meeting minutes.

24 Q Right. And it's the meeting minutes so basically it's
25 kind of what happened there, right?

Hunter - Cross (Ega)

45

1 A Yes.

2 Q Okay. And you see there, it says, "Council member
3 recommendation?"

4 A Yes.

5 Q Right. And that's -- that's because this isn't really a
6 final approval. It's a recommendation to the next level,
7 right?

8 A That is right.

9 Q And if you go to -- you notice that the Federal Reserve
10 Board voted against. Do you remember that?

11 A I do.

12 Q Okay.

13 MR. EGAN: If you go page two of this, and if we
14 could blow up the first two paragraphs.

15 BY MR. EGAN:

16 Q This, sir, is a summary of what you told this Council,
17 correct?

18 A That's correct.

19 Q And it says here that you told them, the last two
20 sentences of the second paragraph, "A private investor has
21 proposed to invest a minimum of 15 million into the HC -- that
22 means the holding company, right?"

23 A That's right.

24 Q And up to \$40 million, total, correct?

25 A That's right.

Hunter - Cross (Ega)

46

1 Q "This injection," and I assume that means the whole 15,
2 "would return the bank to well-capitalized and make the
3 investor a ten percent shareholder," correct?

4 A That's right.

5 Q "The investor is reportedly very strong with a \$300
6 million net worth."

7 A Yes.

8 Q Correct? Now, sir, it doesn't reflect in here at all
9 that you told them that his investment was contingent on a
10 DVFG deal, does it?

11 A It does not.

12 Q And that's 'cause you didn't tell them, right?

13 A That would be correct, yes.

14 Q Now, after that Council meeting your role becomes
15 somewhat less -- you don't have that much to do with this
16 anymore, right?

17 A That would be true.

18 Q You were asked one question by the Treasury 'cause they
19 wanted to find out if any of the money was in the bank yet.

20 A That's right.

21 Q And you told them \$5 million has been invested.

22 A That's right.

23 Q Okay.

24 MR. EGAN: I have no further questions, Your Honor.

25 MR. DUNCAN: Thank you, you know. May I proceed?

Hunter - Cross (Dun)

47

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. DUNCAN:

4 Q Good morning again, Mr. Hunter.

5 A Hi.

6 Q Other than a brief pleasant chat about D.C. yesterday out
7 in the hallway, you and I have never met, have we?

8 A To my knowledge that's true.

9 Q The first time you were interviewed by the Government
10 agents in this case was last October, is that correct?

11 A I suppose.

12 Q Well, if we could --

13 MR. DUNCAN: If -- just for the witness could we see
14 D-226.

15 BY MR. DUNCAN:

16 Q See if this refreshes your recollection, Mr. Hunter.

17 MS. BARRY: Your Honor, Government will stipulate to
18 the day that they met.

19 MR. DUNCAN: Thank you, Ms. Barry.

20 THE COURT: All right. Thank you.

21 MR. DUNCAN: We'll take that stipulation, Your
22 Honor.

23 THE COURT: Thank you.

24 BY MR. DUNCAN:

25 Q So that was about six months ago, correct?

Hunter - Cross (Dun)

48

1 A Roughly, yeah.

2 Q And you were interviewed by telephone, is that correct?

3 A My initial conversations with the Government was by
4 telephone.

5 Q And you were in your offices at the FDIC in the
6 Washington, D.C. area, correct?

7 A That's right.

8 Q And you don't know where the Government agents were, do
9 you?

10 MS. BARRY: Objection.

11 THE COURT: Sustained.

12 BY MR. DUNCAN:

13 Q You were actually surprised to be contacted about this,
14 weren't you, Mr. Hunter?

15 MS. BARRY: Objection.

16 THE COURT: Sustained.

17 BY MR. DUNCAN:

18 Q Sir, had you thought about Nova at all in the last six
19 years?

20 A I was always concerned about what happened to the banks
21 that I represented for TARP funds, but I was not concerned
22 about Nova in particular.

23 Q So you don't -- you didn't have anything to do with it
24 over the last several years, correct?

25 A That's true.

Hunter - Cross (Dun)

49

1 Q Okay. Mr. Hunter, this is our client, Barry Bekkedam,
2 gentleman here in the middle.

3 Have you ever met him?

4 A To my knowledge, no.

5 Q Did you ever have any communications with him about
6 anything to do with Nova's TARP application?

7 A It's possible, but I don't recall.

8 Q You don't recall ever talking to him, do you.

9 A I do not recall talking to him.

10 Q So to the best of your knowledge nothing about Mr.
11 Bekkedam had anything to do with any of the information you
12 provided on the TARP application to the CPP, correct?

13 MS. BARRY: Objection.

14 THE COURT: Sustained.

15 BY MR. DUNCAN:

16 Q Sir, did you provide the -- did you provide any
17 information about Mr. Bekkedam to the CPP?

18 A I don't recall providing information about Mr. Bekkedam
19 to the CPP, but it's possible if his name was mentioned in the
20 information that I received from my regional office, I would
21 have forwarded that information to the Council.

22 Q So you just don't -- you don't remember one way or the
23 other, correct?

24 A I don't remember one way or the other, sir.

25 Q Thank you very much, Mr. Hunter, very nice to have met

Hunter - Redirect (Bar)

50

1 you.

2 A Thank you.

3 REDIRECT EXAMINATION

4 BY MS. BARRY:

5 Q Mr. Hunter, when the CPP Council made its recommendation,
6 what was the only contingency CPP Council was concerned with?

7 MR. EGAN: Objection.

8 THE COURT: Sustained.

9 BY MS. BARRY:

10 Q You attended the meeting at CPP Council?

11 A I did.

12 Q And what was the contingency that went with the
13 recommendation?

14 A That Nova Holding Company raise 15 million in capital.

15 Q Okay. And from your time at that meeting was that the
16 most important contingency?

17 MR. EGAN: Objection.

18 THE COURT: Overruled.

19 THE WITNESS: By far, definitely. Was the only
20 consideration.

21 MS. BARRY: Now, I don't -- not sure if we can do
22 this, but, Agent Boyer, if you could, try to do a side-by-side
23 of Government Exhibit 10 and Government's Exhibit 21. Okay.

24 BY MS. BARRY:

25 Q So, Mr. Hunter, looking at the left side of the screen,

Hunter - Redirect (Bar)

51

1 which is Government's Exhibit 10, these were concerns that CPP
2 Council had initially, is that -- is that right?

3 A Yes, those were.

4 Q Okay. And looking after, in May of 2009, once Ms. Koch
5 advised you that defendant Brian Hartline told you about
6 this -- told her about this \$15 million investment by an -- an
7 investor, an individual, and you say, "If we can present
8 strong evidence that the bank has attracted that much private
9 capital, all issues become much more manageable."

10 And when you -- when you say this, did that include
11 issues that CPP Council had had from the beginning?

12 A Yes. Capital is very important to a bank, as you might
13 imagine.

14 It provides liquidity, which was a concern. It
15 reduces the adversely classified asset ratios, which was a
16 concern, and it provides a buffer between the bank's capital
17 and -- and additional losses.

18 MS. BARRY: No further questions. Thank you.

19 MR. EGAN: No questions.

20 MR. DUNCAN: No, thank you, Your Honor.

21 THE COURT: Thank you, sir, you may step down.

22 MS. BARRY: Your Honor, may we just make sure that
23 our -- who we expect to call is -- is here?

24 THE COURT: By all means.

25 (Pause)

Rutkowski - Direct (Bar)

52

1 MS. BARRY: We are going to call, Your Honor, the --
2 United States calls Mary Rutkowski.

3 MARY RUTKOWSKI, GOVERNMENT'S WITNESS, SWORN

4 THE CLERK: Please have a seat. Please state and
5 spell your last name for the record.

6 THE WITNESS: Mary Rutkowski, R-U-T-K-O-W-S-K-I.

7 MS. BARRY: May I proceed, Your Honor?

8 THE COURT: Yes, ma'am.

9 MS. BARRY: Thank you.

10 DIRECT EXAMINATION

11 BY MS. BARRY:

12 Q Ms. Rutkowski, where do you work?

13 A I work for the Pennsylvania Department of Banking and
14 Securities.

15 Q And how long have you been with the -- and does it -- is
16 it sometimes referred to as PADOB, I guess --

17 A S.

18 Q -- S. Okay.

19 A Ten years.

20 Q Okay. And what is your position there?

21 A I'm the Eastern Region Field Supervisor.

22 Q And what does the PADOB do?

23 A We examine state-chartered financial institutions for
24 various components and prepare a report.

25 Q Okay. And does the PODOB work with other agencies?

Rutkowski - Direct (Bar)

53

1 A Yes. We work with the FDIC and the Federal Reserve Bank.

2 Q And in 2009 what was your position?

3 A I was the Senior Financial Institution Examiner.

4 Q Okay. And, ma'am, what -- can you just tell the jury
5 what your educational background, is, please?

6 A Sure. I have an associate's degree in banking from
7 Lucerne County Community College. I attended the American
8 College for two years for financial planning, and I have ten
9 years as an officer of a financial institution.

10 Q Okay. And were you -- in 2009 were you involved in an
11 exam -- examination of Nova Bank?

12 A Yes.

13 Q And what was your role in the examination?

14 A I was the examiner in charge, responsible for preparing
15 the report.

16 Q Now, prior to the examination do you make any request
17 from the bank before -- ahead of time?

18 A Yes. All of our institutions receive what's called the
19 first day letter with a list of all the items that we will
20 need in order to complete our examination.

21 Q Okay. And do some of the things that you ask for include
22 loans?

23 A Yes.

24 Q Okay. And do you request to examine each and every loan
25 that the bank has at the time?

Rutkowski - Direct (Bar)

54

1 A No. We do a sample of loans, typically anything that's
2 classified, any loan that's late or non-accruing and a random
3 sample of large relationships.

4 Q Okay. Now, your particular exam, did it have a certain
5 time period that the examination was going to look at?

6 A It would be a point in time examination as of 6/30/2009.

7 Q Okay. So if the loan was made on 6/30/2009, would that
8 be one that would come up for the examination?

9 A No.

10 Q Now, I'd like to --

11 MS. BARRY: And if I may, Your Honor, approach the
12 witness with -- it's a multi-page document.

13 THE COURT: Surely.

14 BY MS. BARRY:

15 Q I'd like to show you what's been marked as Government's
16 Exhibit 95.

17 And do you recognize what Government's Exhibit 95
18 is?

19 A Yes. This is the examination from 6/30/2009.

20 Q Okay. And this is of Nova Bank?

21 A Yes.

22 Q Okay. And during the examination -- well, let me ask you
23 this.

24 What was the result of the examination?

25 A There was significant deterioration in the condition of

Rutkowski - Direct (Bar)

55

1 the bank, and we had to downgrade several of the components of
2 the examination, which would be like capital, asset quality,
3 earnings --

4 Q Okay.

5 A -- individual areas we review.

6 Q Okay. And the areas that you review, is it sometimes
7 referred to as Camels?

8 A Yes.

9 Q Okay. And the Camels, and I guess C is capital. Can you
10 just --

11 A Sure.

12 Q -- tell the jury what Camels stands for?

13 A C is capital, A is asset quality, M is management, E is
14 earnings, L is liquidity, S is sensitivity to market rate
15 risk, and then we have an overall composite rating.

16 Q Okay. And when you're -- in your experience with
17 examinations do the different areas affect one another?

18 A Yes. They're all interrelated.

19 Q Now, what were the conclusions about the bank's capital
20 after the examination?

21 A Capital was downgraded to less than satisfactory.

22 Q Okay. And when it came to capital, did you have a
23 conversation with Mr. Hartline about the bank's capital?

24 A Yes.

25 Q And what did Mr. Hartline say?

Rutkowski - Direct (Bar)

56

1 A That they were anticipating receiving approximately \$10
2 million from a private investor, as well as \$17 million in
3 TARP funds.

4 Q Okay. And --

5 MS. BARRY: Your Honor, the Government would move
6 for the admission of Exhibit 95.

7 MR. EGAN: No objection.

8 UNIDENTIFIED ATTORNEY: No objection.

9 BY MS. BARRY:

10 Q And if we could, please, take a look and it --

11 MS. BARRY: And it may it be published, Your Honor.

12 THE COURT: Granted.

13 MS. BARRY: And if we could please take a look at
14 page three of 43. Okay. And if we can look at that top
15 portion.

16 BY MS. BARRY:

17 Q And so what is -- what are we looking at here? Is this
18 part of the examination?

19 A Yes. This is the actual Camels ratings from the prior
20 two examinations, as well as the 6/30 examination.

21 Q And in your summary that follows is there a sort of
22 discussion as to each of the areas that were examined?

23 A Yes.

24 Q Okay. And, again, what is the scale that the ratings are
25 on?

Rutkowski - Direct (Bar)

57

1 A One is strong, two is satisfactory, three is less than
2 satisfactory, four is deficient, and five is critically
3 deficient.

4 Q And looking at the results of the examination we see that
5 a three is -- stands for that the capital is --

6 A Less than satisfactory.

7 Q -- less than satisfactory.

8 And -- and looking, asset quality, as a four, what
9 does that mean?

10 A That it was deficient.

11 Q Okay. And what about earnings for the bank?

12 A That would be deficient, as well.

13 Q Okay. And so based on these ratings was there an overall
14 composite downgrade, as you say?

15 A That's correct. The risk management composite was
16 downgraded from a two, which is satisfactory, to a three,
17 which is less than satisfactory.

18 Q Okay. If we take a look at page -- well, did you have --
19 who is Brian Hartline? I'm not sure if I asked you that.

20 A He was the President and CEO of the company.

21 Q Okay. And did you have a conversation or did you -- did
22 you discuss the results of the exam with him?

23 A Yes.

24 Q Okay.

25 A Yes, we would have had a formal exit meeting where we

Rutkowski - Direct (Bar)

58

1 would sit down with senior management and go over all the
2 ratings.

3 Q Okay. And looking at page seven of 43, please.

4 And if we look at capital, can you just read --
5 is -- what is the italicized portion?

6 A That is management's response. Any time a rating is a
7 three, four or five we need to provide a response from
8 management in our report.

9 Q Okay. And what was the response from management on the
10 downgrade of the capital to less than satisfactory?

11 A That they were waiting to receive money from a private
12 investor and -- and TARP funds. Would you like me to read it?

13 Q Yes, please.

14 A Okay.

15 "According to the President and Chief Executive
16 Officer, Brian M. Hartline, the bank will receive \$10.3
17 million from a private investor and TARP CPP funds of
18 approximately \$17 million. The bank is working with
19 other investors which would approximate an additional
20 500 -- that would be thousand -- that will be received by
21 the end of the year. With the above capital proceeds
22 Nova anticipates a RWC ratio of approximately 12 percent
23 and a tier one capital ratio of approximately nine
24 percent by December 31, 2009."

25 Q Okay. And on page 35 of 43, at the bottom there, where

Rutkowski - Direct (Bar)

59

1 did this information come from?

2 A That information would have been provided by management.

3 Q Okay. And what did management advise? And if you could
4 read it.

5 A "The bank has applied for and will receive \$17 million
6 under the TARP CPP prior to year end. The bank opted to
7 participate in the TLGP."

8 Q And what's the TLGP?

9 A The Temporary Liquidity Guarantee Program.

10 Q And does management or does the bank provide information
11 on their directors and trustees?

12 A Yes.

13 Q Okay.

14 A Yes. That is provided when we request -- it's on the
15 list in the first day letter.

16 Q Okay. And I'd like to show you, please, what's been --
17 page 39 of 43. Okay.

18 And what does it say about Mr. Hartline?

19 A. "After serving as the Executive Vice President, Chief
20 Operating Officer and CFO for USA Bankshare, Inc. from
21 1998 to 2000 Mr. Hartline left the bank to work as
22 President and CEO of Main Street Bank Corp., Inc.,
23 Reading. Upon his return in 2002 he was named President
24 and CEO of both the bank and the holding company. Mr.
25 Hartline is responsible for the oversight of the bank.

Rutkowski - Direct (Bar)

60

1 He is also a certified public accountant."

2 MS. BARRY: May I have a moment, Your Honor?

3 THE COURT: Surely.

4 (Pause)

5 MS. BARRY: Now, if we could take a look at the
6 first page of the -- of Government's Exhibit 95. Okay.

7 BY MS. BARRY:

8 Q Okay. And looking at the first page, the -- you said
9 that -- what is the time again? You said this was at -- in a
10 date and time. Can --

11 A That's correct.

12 Q Can you explain sort of what --

13 A Sure.

14 Q -- the timing of what you're looking at and when you did
15 the exam?

16 A Sure. A point in time is at the specific date. It's
17 typically one of the four quarters of the year. This was as
18 of close of business June 30, 2009.

19 It takes a few months to generate that data. So we
20 start the examination on October 5, 2009.

21 Q Okay. And do you recall when the exit meeting was?

22 A It -- it should be documented in -- the exit meeting took
23 place November 10, 2009. It's located on page seven.

24 Q Okay.

25 MS. BARRY: No further questions, Your Honor.

Rutkowski - Cross (Ega)

61

1 THE COURT: You may proceed.

2 CROSS-EXAMINATION

3 BY MR. EGAN:

4 Q Good morning, Ms. Rutkowski.

5 A Morning.

6 Q How you doing?

7 A I'm fine. And you?

8 Q Good, thanks.

9 So you're -- at the time you were an inspector,
10 right?

11 A An examiner?

12 Q Examiner, I'm sorry. And you were the chief examiner for
13 this group, right?

14 A I was the examiner in charge, yes.

15 Q Examiner in charge.

16 A Correct.

17 Q And an examiner in charge, there were folks to be in
18 charge of, I assume?

19 A Yes.

20 Q And on this particular examination you had a number of
21 your colleagues who assisted, correct?

22 A Correct.

23 Q And just ballpark, like about six?

24 A Between six and eight.

25 Q Between six and eight. So yourself and between six and

Rutkowski - Cross (Ega)

62

1 eight people.

2 It says exam began on October 5th. You come into
3 the bank on October 5th, right?

4 A Correct.

5 Q And this exit meeting was in early November, right?

6 A That's correct.

7 Q And so basically from October 5th until -- for a couple
8 weeks at a minimum or late October you're in there examining,
9 right?

10 A Typically it's four weeks.

11 Q Four weeks. So for a whole month.

12 A Correct.

13 Q And while you're there, you kind of have free run of the
14 place, right?

15 A We're provided with documentation that we request a month
16 ahead of time, and then we speak to various people that are
17 provided by management for us to talk to about the
18 documentation.

19 Q Right. And the people that are provided by management to
20 you are the people who are in charge of that specific area of
21 the bank, right?

22 A Usually, yes.

23 Q So do you recall whether the person you talked to about
24 the lending and the credit was Mr. Poliski? Remember him?

25 A I do not.

Rutkowski - Cross (Ega)

63

1 Q Okay. You don't really remember any of the people that
2 well?

3 A Well, I remember Mr. Hartline because he was my direct
4 contact there.

5 Q Right.

6 A But each of the examiners would have been responsible for
7 different sections.

8 Q Okay.

9 A So asset quality would have been covered by one of our
10 loan specialists --

11 Q I --

12 A -- who would have met with whoever was in charge of
13 loans.

14 Q So the loan specialist would meet with the credit
15 manager, who we know at this point was a Mr. Poliski --

16 A Okay.

17 Q -- and ask him all the questions you wanted to ask,
18 right?

19 A Yes.

20 Q Okay. And same thing for folks who are looking at who
21 the investors are?

22 A That's correct.

23 Q Somebody does that, as well.

24 A Yes.

25 Q And you're in charge.

Rutkowski - Cross (Ega)

64

1 A That's correct.

2 Q Great. You said that it was as of June 30th, correct?

3 A That's correct.

4 Q But when you come in in October, you are able to and
5 often do look at information that comes in later than June
6 30th, don't you?

7 A It -- it depends on what kind of information it is and if
8 it's provided to us by the bank.

9 Q Right. If you could go to page --.

10 MR. EGAN: Oh, could we have, back up, Government's
11 Exhibit 95? And if we could go to page 33.

12 I'm sorry, it's -- it's page 33 or 43. Actually,
13 page 31 in the report, but page 33 or 43 down in the lower
14 left.

15 And if we could blow up -- no, next one down, scope
16 of the examination.

17 BY MR. EGAN:

18 Q Now, I guess what you're telling us is you aren't really
19 the person who reviewed the loans?

20 A No, I did not.

21 Q Okay. But whoever reviewed the loans would have put
22 this -- this in here, right?

23 A That's correct.

24 Q And then you sign off on the whole thing 'cause they're
25 your people, and you're in charge.

Rutkowski - Cross (Ega)

65

1 A That's correct. We verify the information that we sign
2 off on, and as of August 31st was the loan dated date --

3 Q Right.

4 A -- but the bank generates --

5 Q So let me just ask -- I've got a question for you.

6 A Okay.

7 Q Okay. It says here, does it not, that an independent
8 examination commenced on October 5, 2009, right? Says that?

9 A Yes.

10 Q Says, "Utilizing financial data as of June 30, 2009,"
11 right?

12 A Yes.

13 Q And loan data as of August 31, 2009, right?

14 A Correct.

15 Q That's what it says.

16 A Yes.

17 Q Okay. Now, if we go down about five lines, there's a
18 sentence that says, "Loan relationships in excess of 1.664
19 million," I guess that is --

20 A Uh-huh.

21 Q -- "were reviewed," right?

22 A That's correct.

23 Q So all loan relationships in excess of 1.664 million were
24 reviewed.

25 A That's correct.

Rutkowski - Cross (Ega)

66

1 Q And it says, "Along with all past due non-accrual and
2 internally classified loans, correct?

3 A Correct.

4 Q Now, if we could go to page 41 of 43.

5 And you didn't -- were you the person who did the
6 shareholders part, or did someone else do that, too?

7 A I'd have to see which part you're --

8 Q Oh, I'm sorry.

9 A -- referring to.

10 Q So the very bottom of that page, if you blow it up,
11 starting at "principal shareholders"? See that?

12 A Yes.

13 Q Okay. Was this something that you did personally, or is
14 this something somebody else did?

15 A The bank would have provided us a list of their
16 shareholders, and we would have put it into the report.

17 Q Right. So the bank -- so you're reviewing the loan
18 portfolio at the bank as part of this examination, correct?

19 A Correct.

20 Q And the bank's providing you with the name of the
21 shareholders, correct?

22 A Correct.

23 Q And the bank provides you with the name. The third name
24 down there is who?

25 A The D1183 Trust, Thomas K. Glenn.

Rutkowski - Cross (Ega)

67

1 Q Oh, the one above that, I'm sorry.

2 A Levin, George G.

3 Q George G. Levin, right?

4 A Uh-huh.

5 Q And it has 454,545 shares, I guess that is, right?

6 A Yes.

7 Q And he's not actually the biggest shareholder, is he?

8 A No.

9 Q Okay. So when you're finished this examination, you have
10 a meeting with management, right?

11 A Correct.

12 Q And they're not real happy 'cause things have been
13 downgraded, right?

14 You have to say yes or no.

15 A Yes.

16 Q And so they are allowed to present information to try
17 and, you know, make you think maybe that's not quite correct,
18 right?

19 A Right, that's correct.

20 Q Didn't change your rating at all, did it.

21 A No. Typically the replies included in our report
22 italicized after the component ratings --

23 Q Right.

24 A -- and the composite ratings, so --

25 Q But it doesn't have any impact on what you actually

Rutkowski - Cross (She)

68

1 decide?

2 A Typically, no.

3 Q And what's in that little paragraph there?

4 That's a paraphrasing of what you were told, right?

5 I mean you don't pass this out to Mr. Hartline to fill it out,
6 do you?

7 A No.

8 Q So you had a meeting with him, right?

9 A Right.

10 Q He told you some things at that meeting, right?

11 A That's correct.

12 Q You went -- after the meeting you went back to your
13 office, and you wrote down what you recall that he told you.

14 A I usually take notes at the meeting, but yes.

15 MR. EGAN: I have no further questions, Your Honor.

16 MS. SHEALEY: May I proceed?

17 THE COURT: Sure.

18 CROSS-EXAMINATION

19 BY MS. SHEALEY:

20 Q Good morning, Ms. Rutkowski.

21 A Morning.

22 Q If we could -- if you could turn to Government Exhibit
23 95, the same exhibit, to page -- I believe it's 35.

24 Do you have a hard copy?

25 A I do.

Rutkowski - Cross (She)

69

1 Q Okay. Great. And if you could take a look for -- well,
2 it's page 38, I'm sorry, of the document.

3 If you could take a look at the list of directors,
4 trustees starting on page 38, and then going through the list
5 of officers who are not directors or trustees on to -- on
6 pages -- starting on page 40 and going through 41.

7 And as you're looking through that list of names,
8 can you tell me if my client, Barry Bekkedam, is anywhere on
9 that list?

10 A No.

11 Q And throughout your examination you're generally familiar
12 with the officers and directors of Nova Bank, right?

13 A Yes.

14 Q And -- and you would agree that it's not a typo. Mr.
15 Bekkedam is neither an officer or a director of Nova Bank, is
16 he?

17 A Not to my knowledge.

18 Q Okay. And you were provided access to people at the bank
19 to ask questions during your exam, right?

20 A Yes.

21 Q You didn't ask any questions of Mr. Bekkedam, did you?

22 A No.

23 Q Okay. During your examination of Nova you would have
24 noted if an outside individual like Mr. Bekkedam had exercised
25 any control over the lending decisions at the bank, wouldn't

Rutkowski - Cross (She)

70

1 you?

2 A Yes, if we knew.

3 Q If you knew. There's nothing like that in this report,
4 is there?

5 A No.

6 Q Similarly, during your -- excuse me, during your
7 examination of the bank if you had identified any instances of
8 an outside person like Barry Bekkedam influencing how the bank
9 conducted its capital calculations, you would have noted that
10 in your report, wouldn't you?

11 A Yes.

12 Q And you didn't notify -- notice anything like that in
13 your report, did you?

14 A No.

15 Q Again, I mean in looking through the report, I realize
16 it's lengthy, but you're generally familiar with it, right?

17 A Yes.

18 Q There's no mention of Barry Bekkedam at all, is there?

19 A No.

20 Q And other than possibly the fact that Mr. Bekkedam was a
21 customer of Nova, Barry Bekkedam didn't come up at all
22 anywhere in your exam, did he?

23 A Not that I recall.

24 Q No. And I realize this has all been a long time ago.

25 The first time you were interviewed in this case by

Rutkowski - Redirect (Bar) - Recross (Ega)

71

1 the Government, that was last summer, is that right?

2 A I believe so.

3 Q Okay.

4 A Last summer, last fall. I'm not really sure when.

5 Q Thank you.

6 MS. SHEALEY: No further questions, Your Honor.

7 THE COURT: Thank you.

8 MS. BARRY: If we could please put up and publish,
9 Your Honor, page 41 of 43, which is Government's Exhibit 95,
10 the report of examination?

11 I'm sorry. It's 41 of 43. Okay. And if we go to
12 the bottom portion that Mr. Egan showed the witness.

13 REDIRECT EXAMINATION

14 BY MS. BARRY:

15 Q Did your exam involve tracing the source of funds for all
16 of these individuals or entities?

17 A No.

18 MS. BARRY: No further questions, Your Honor.

19 MR. EGAN: May I, Your Honor?

20 RECROSS-EXAMINATION

21 BY MR. EGAN:

22 Q Now, you're familiar with Regulation O, correct?

23 A Yes.

24 Q And that involves loans to shareholders?

25 A That's correct.

Rutkowski - Redirect (Bar) - Recross (Ega)

72

1 Q So you would be investigating loans to shareholders,
2 correct?

3 A It's part of our review, yes.

4 Q And -- and you didn't note anything about any violation
5 with regard to that, did you?

6 You can go look.

7 A There is no violation of Reg O at this examination.

8 Q And Mr. Levin was a shareholder, correct?

9 A He's listed on the page as a shareholder, yes.

10 Q Thank you.

11 MR. EGAN: Nothing further, Your Honor.

12 MS. SHEALEY: We have no further questions of this
13 witness.

14 MS. BARRY: Nothing further, Your Honor.

15 THE COURT: Thank you. You may step down. Watch
16 your step, please.

17 Fifteen minutes.

18 (Recess taken, 11:02 a.m. to 11:26 a.m.)

19 THE COURT: Okay.

20 MR. EGAN: Yes, Your Honor.

21 UNIDENTIFIED ATTORNEY: Yes, Your Honor.

22 (Jury in, 11:28 a.m.)

23 THE CLERK: All rise.

24 THE COURT: You may be seated. Thank you.

25 MS. BARRY: Your Honor, the United States calls

Course - Direct (Bar)

73

1 Cynthia Course.

2 CYNTHIA COURSE, GOVERNMENT'S WITNESS, SWORN

3 THE CLERK: Please state -- have a seat. State and
4 spell your name for the record.

5 THE WITNESS: Cynthia Course, C-Y-N-T-H-I-A
6 C-O-U-R-S-E.

7 THE CLERK: Thank you.

8 THE COURT: You may proceed.

9 MS. BARRY: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. BARRY:

12 Q Good morning, Ms. Course.

13 A Good morning.

14 Q Where do you work?

15 A I work for the Federal Reserve Bank of San Francisco.

16 Q And how long have you been with the -- and you said the
17 Federal Reserve Bank of San Francisco.

18 How long with San Francisco?

19 A Coming on five years.

20 Q Okay. And have you been working for the Federal Reserve
21 Bank, whether San Francisco or other places, for a certain
22 period of time?

23 A Yes, I have.

24 Q And what time period is that?

25 A Twenty-two years, total. Coming on 22 years with the

Course - Direct (Bar)

74

1 Federal Reserve system.

2 Q Okay. And did you go to college, ma'am?

3 A Yes, I did.

4 Q And what was your degree?

5 A I have a joint degree in accounting and law enforcement.

6 Q Okay. And do you have any post-college degrees?

7 A Yes, I have a master's in business administration.

8 Q Okay. And are you also a CPA?

9 A Yes, I am.

10 Q Okay. And did you ever work in -- at the Federal Reserve
11 Bank of Philadelphia?

12 A Yes, I did.

13 Q And what time period was that?

14 A From 1994 till 2011.

15 Q Okay. And in 2009 what was your position with the -- the
16 Federal Reserve in Philadelphia?

17 A I was an assistant vice president in the banking
18 supervision area with responsibility over enforcement and
19 administration.

20 Q Okay. And do you recall whether the Philly Fed regulated
21 an entity called Nova Financial Holding Company?

22 A Yes, it did.

23 Q Okay. And what was the holding company's largest asset?

24 A At the time Nova's -- Nova Financial Holding's largest
25 asset was its lead subsidiary bank, Nova.

1 Q Now, at some point in time were you detailed to
2 Washington, D.C.?

3 A Yes, I was.

4 Q And what was that detail?

5 A From December 2008 to December 2009 I was on a detail to
6 the Board of Governors in Washington, D.C. to work on the TARP
7 Capital Purchase Program.

8 Q Okay. And what was your role?

9 A Generally, my role was to handle a lot of the
10 administrative aspects, the organizational aspects as the
11 Federal Reserve reviewed applications for the TARP Capital
12 Purchase Program.

13 Occasionally I also performed analysis of the
14 applications and made recommendations to the Federal Reserve's
15 representative as to whether an application should be approved
16 or denied.

17 Q Okay. And when information for an -- for an institution
18 that was applying for funds via the Capital Purchase Program,
19 who -- who would be responsible for gathering the information?

20 A The way the program was established the federal regulator
21 who supervised the lead bank of the organization would be the
22 one who would do the majority of the investigative work on the
23 application.

24 Q Okay. And can you just maybe walk us through the process
25 of when an application went into -- was sent up for -- for

1 TARP approval or for CPP approval?

2 It would go -- would the application go to the
3 institution's primary regulator?

4 A Yeah. The application would be filed initially with the
5 primary regulator of the subsidiary bank. The Federal
6 Reserve, if there was a company that owned the bank, would
7 also receive a copy of the application, but the primary
8 regulator of the bank would receive and process the -- the
9 main application.

10 Q Okay. And how did it make its way to CPP counsel, if --
11 if you know?

12 A After the primary regulator of the bank finished its
13 review of the application. It would decide whether it was
14 going to recommend the application for approval or was going
15 to need to work with the institution on -- on the denial.

16 If they were recommending it for approval, they
17 would submit it to the CPP Council for the Council's review of
18 the application.

19 Q Okay. And then what happens after CPP Council makes a
20 recommendation?

21 A After the CPP Council made a recommendation on the
22 application, the application would be forwarded to the U.S.
23 Treasury where the Treasury's Investment Committee would then
24 do an independent assessment taking into consideration the
25 recommendation of the primary regulator and the Council.

Course - Direct (Bar)

77

1 Q Would the Treasury ever request additional information
2 from CPP Council or the primary regulator?

3 A Typically they would make the request for additional
4 information from the primary regulator.

5 Q Now, when you were detailed to the CPP Council, do you
6 recall whether or not Nova Bank had submitted an application
7 for funds pursuant to the CPP program?

8 A Yes, I recall that it did.

9 Q Okay. And if I could turn your attention, please, to --
10 well, let -- let me ask you this before I get there.

11 And during the time that Nova Bank's application was
12 being processed do you recall whether or not there was any
13 adjustment to its capital levels?

14 A I'm -- I'm sorry. I'm not sure I understand the
15 question.

16 Q While the -- do you -- do you know whether or not there
17 were any issues related to Nova Bank's capital?

18 A Yes.

19 Q Okay. And what were the issues if you -- if you know?

20 A While -- before the application came to the Council, Nova
21 Bank filed an amended call report, which is the financial
22 statement that it files with its regulators, that indicated
23 that its capital levels had declined, and they were now going
24 to be an inadequately capitalized position, as opposed to a
25 well-capitalized position.

Course - Direct (Bar)

78

1 Q And how would that affect the approval process?

2 A One of the criteria to be eligible to receive funds under
3 the TARP Capital Purchase Program was that the institution be
4 considered to be viable without the TARP funds. And one of
5 the tests of viability related to their capital levels.

6 Q Okay. Now, I'd like to turn your attention to what's
7 been marked as Government's Exhibit 30.

8 MS. BARRY: And I believe this is in evidence, Your
9 Honor, and may it be published?

10 THE COURT: Yes.

11 BY MS. BARRY:

12 Q Now, before we get --

13 MS. BARRY: I'd like to look at the second page
14 first, if -- if that's possible. Okay.

15 BY MS. BARRY:

16 Q Now, looking at the first sentence, it states, "This case
17 was submitted for notational vote on April 10th and deferred
18 from the CPP Council meeting on May 13th."

19 What -- what does that mean?

20 A The first time that the FDIC, which was the primary
21 regulator for Nova, the subsidiary bank, submitted the TARP
22 application, it came through what we called a notational vote.

23 There was no face-to-face discussion of the
24 application among the members of the TARP CPP Council, but
25 each reviewed the application and the FDIC's recommendation on

Course - Direct (Bar)

79

1 their own in their offices and made an initial recommendation
2 about it.

3 Q Okay. And what was that recommendation?

4 A The Federal Reserve recommended denial of the
5 application. The OCC and the OTS recommended that the
6 application be deferred to the Council for discussion at a
7 future meeting and raised several questions that they felt
8 needed to be answered.

9 Q Okay. And when it came to those questions that needed to
10 be answered, who did they look to to provide their response?

11 A The Council expected the FDIC, the primary regulator of
12 the bank, to provide the response.

13 Q Okay. Now, at this meeting of the Council on June 10,
14 2009 were -- was the bank's capital something that was
15 discussed?

16 A Yes.

17 Q And what did the FDIC's representative say with respect
18 to the -- the capital?

19 A The FDIC's representative advised the Council that Nova
20 Financial Holdings was in the process of raising additional
21 capital that would be injected into the bank.

22 Q Okay. And so -- and how -- and so based on -- on the
23 information from the FDIC what was the results of that
24 meeting?

25 A At the June 10th meeting the Federal Reserve still

Course - Direct (Bar)

80

1 recommended denial of the application. The OCC, the OTS and
2 the FDIC recommended approval of the application, contingent
3 upon a capital injection from external sources of \$15,000.

4 Q Okay. And so when the CPP Council -- and you see on
5 page -- on the -- on this first page of 30, the three agencies
6 that did approve, there's an asterisk, and it says,
7 "Contingent on capital injection of 15 million."

8 What did that mean?

9 A That meant that they only were recommending approval of
10 the application if an additional \$15 million was raised from
11 outside sources and injected into the company before the TARP
12 funds were invested.

13 Q And when you say "outside sources," do you mean new money
14 or not?

15 A Yes, new money.

16 Q Now, do you know if there was an inspection or review of
17 Nova Financial Holding Company in and/or about April of 2009?

18 A Yes, there was.

19 Q And what was the result of that inspection?

20 A The inspection was conducted by the Federal Reserve Bank
21 of Philadelphia, and it determined that Nova Financial
22 Holdings was in less than satisfactory financial condition,
23 and it resulted in a rating of three --

24 Q Okay.

25 A -- which was less than satisfactory.

Course - Direct (Bar)

81

1 Q And I'd like to show you --

2 MS. BARRY: And I believe it's already been moved
3 into evidence, Your Honor, Government's Exhibit 32. And may
4 it be published?

5 THE COURT: Yes.

6 BY MS. BARRY:

7 Q And looking at Government's Exhibit 32, what is this?

8 A This is the letter that the Federal Reserve Bank of
9 Philadelphia sent to Nova Financial Holdings advising it of
10 the results of the inspection and the fact that it was being
11 issued a risk management and a composite rating of three.

12 Q Okay. And what's the date of this letter?

13 A June 10, 2009.

14 Q And based -- as a result of this inspection was there any
15 other action taken by the Federal Reserve?

16 A Yes.

17 Q And what was that?

18 A When an inspection concludes that a company is in less
19 than satisfactory condition, a recommendation gets made to the
20 enforcement area of the Federal Reserve Bank of Philadelphia
21 to take enforcement action or to compel the company to take
22 action to get itself back into satisfactory condition.

23 Q Okay. And I'd like to show you, and I believe just for
24 the witness at this point, Government's Exhibit 34.

25 And do you recognize what is Government's Exhibit

Course - Direct (Bar)

82

1 34?

2 A Yes.

3 Q And what is that?

4 A This is the letter that was sent to Nova Financial
5 Holdings advising it that it was being put under an
6 enforcement action.

7 Q Okay. And did you see this letter before it went out?

8 A Yes.

9 Q Okay. And are you referenced in this letter?

10 A Yes.

11 MS. BARRY: Your Honor, the Government moves for the
12 admission of Exhibit 34.

13 UNIDENTIFIED ATTORNEY: No objection.

14 UNIDENTIFIED ATTORNEY: No objection.

15 MS. BARRY: Okay. May it be published?

16 THE COURT: Yes.

17 MS. BARRY: Okay.

18 BY MS. BARRY:

19 Q And -- and what is the date of this letter?

20 A June 17, 2009.

21 Q Okay. And based -- is this letter a result of the
22 downgrade of the holding company

23 A Yes, it is.

24 Q And what kind of supervisory action was -- was taken or
25 there -- yes.

1 I mean what kind of supervisory action if any, was
2 taken.

3 A This letter was called a supervisory letter, and it
4 placed restrictions on Nova Financial Holding's ability to pay
5 dividends, to issue debt and to redeem its stock.

6 Q Okay. And was there any way for Nova Bank to get out
7 from under these restrictions?

8 A Well, the restrictions were on Nova Financial Holding
9 Company, not the bank. So --

10 MR. EGAN: Objection to the rest.

11 THE COURT: I'm sorry?

12 MR. EGAN: The question was it put restriction on
13 the bank, and she said it was on the holding company, not the
14 bank. So whatever else she says won't be about the bank.

15 THE COURT: Overruled, but could she explain.

16 BY MS. BARRY:

17 Q Okay. Go ahead.

18 A There were ways that the holding company could get out of
19 these restrictions.

20 Q Okay. And what -- and how was that?

21 A There were two ways. The first is that the holding
22 company could ask permission of the Federal Reserve Bank of
23 Philadelphia to pay dividends, to issue debt or to redeem its
24 stock.

25 The second way as to the dividends only would be for

Course - Direct (Bar)

84

1 the holding company to ensure -- to put the bank in a
2 well-capitalized position where the bank itself was considered
3 well-capitalized under Government rules, and then the dividend
4 restrictions would no longer apply.

5 Q Okay. So the holding company -- Nova Financial Holding
6 Company, what was its primary responsibility at -- at -- in
7 June of 2009?

8 A From a regulatory perspective the primary role of a
9 holding company is to serve as a source of strength to the
10 subsidiary bank.

11 Q Okay. And if an outside investor wanted to invest in the
12 bank in the setup that -- that we have here -- and do you know
13 whether this is called a small shell?

14 A Yeah, Nova Financial Holding Companies would have been
15 considered a small shell holding company --

16 Q Okay.

17 A -- because of its size.

18 Q Okay. And with its primary asset being the -- the bank?

19 A Correct.

20 Q Okay. So if an outside investor wanted to invest in the
21 bank, what shares would it -- that outside investor actually
22 hold?

23 A The bank -- the holding company, Nova Financial Holdings,
24 owned all of the stock of the bank. An outside investor who
25 wanted to invest in the organization would be purchasing

Course - Direct (Bar)

85

1 shares of Nova Financial Holdings.

2 Q Okay. And then what would happen with the money that
3 purchased -- that was used to purchase the -- the stock in the
4 holding company?

5 A When stock in the holding company was purchased, the
6 holding company would then decide what it would use the
7 proceeds from, whether it would be investing it in the
8 subsidiary bank or use it for other corporate purposes.

9 Q So that it would be -- is it fair to say it would be
10 downstreamed to the bank?

11 MR. EGAN: Objection; leading.

12 THE COURT: Sustained.

13 BY MS. BARRY:

14 Q Is there a term that you're familiar with called
15 downstreaming?

16 A Yes.

17 Q Okay. And so would that -- would an investment from an
18 outside investor, if they wanted to invest in Nova Bank,
19 purchase Nova Financial Holding stock?

20 A That -- that could be one way to put it, yes.

21 Q Okay. And do you know whether or not the money then
22 would be downstreamed to the bank?

23 A If Nova Financial Holdings were to choose to downstream
24 the funds to the bank to create additional capital at the
25 bank, that would be one use of the funds.

Course - Direct (Bar)

86

1 Q Okay. Now, do you know whether anyone at Treasury
2 followed up on this \$15 million contingency that needed to be
3 met prior to issuing TARP funds?

4 A Yes.

5 Q Okay. And I'd like to show you what's been marked as
6 Government's Exhibit 61.

7 MS. BARRY: I'm not sure if this has been moved into
8 evidence.

9 UNIDENTIFIED ATTORNEY: 61 is in.

10 MS. BARRY: Okay. If I may publish this, Your
11 Honor?

12 THE COURT: Yes. What number again?

13 MS. BARRY: And it's Government's Exhibit 61.

14 THE COURT: Any objection?

15 UNIDENTIFIED ATTORNEY: Your Honor --

16 (Pause)

17 UNIDENTIFIED ATTORNEY: Can we see you at sidebar,
18 Your Honor?

19 UNIDENTIFIED ATTORNEY: Well, in this --

20 THE COURT: Surely. You can approach, please.

21 (Sidebar begins)

22 MS. BARRY: Yeah, she has -- so I'll -- I'll lay the
23 foundation if you -- Your Honor, I believe previously this
24 e-mail was limited to a certain section, but she's on some
25 other of the e-mails in 61. So I will make sure that we talk

Course - Direct (Bar)

87

1 about that if they put that on the record before publishing
2 it.

3 MR. EGAN: Okay. That's fine. Just wanted to
4 check.

5 (Sidebar ends)

6 THE COURT: You may continue.

7 MS. BARRY: Thank you, Your Honor. And may I
8 approach the witness with a hard copy? May be easier.

9 THE COURT: Yes.

10 BY MS. BARRY:

11 Q Ms. Course, I'm showing you what's been marked as
12 Government's Exhibit 61.

13 And what is Government's Exhibit 61?

14 A This is a series of e-mails that started with a gentleman
15 named Mario Fuentes.

16 Q Okay. And were you forwarded the e-mail from Mario
17 Fuentes.

18 A Yes, I was.

19 Q Okay.

20 MS. BARRY: Your Honor, the Government moves for the
21 admission of Government's Exhibit 61.

22 MR. EGAN: No objection.

23 UNIDENTIFIED ATTORNEY: No objection.

24 MS. BARRY: Okay.

25 THE COURT: Granted.

Course - Direct (Bar)

88

1 MS. BARRY: And if we could please publish 61, Your
2 Honor?

3 THE COURT: Yes.

4 MS. BARRY: And, Agent Boyer, if you would please
5 show page three.

6 BY MS. BARRY:

7 Q And looking at the mail from Mario Fuentes -- who is
8 Mario Fuentes?

9 A Mario Fuentes, who's one of the individuals who was
10 detailed to Treasury to work on the TARP Capital Purchase
11 Program.

12 Q Okay. And in looking at this, what is the date of Mr.
13 Fuentes' e-mail?

14 A July 13th.

15 Q Okay. So is that a date that is after the June 10, 2009
16 CPP Council meeting?

17 A Yes.

18 Q Okay. And what is Mr. Fuentes asking for, just
19 generally, in -- in his e-mail?

20 A He's asking for confirmation of whether the \$15 million
21 that was a condition of the TARP Capital Purchase Program
22 approval by the Council had been injected into the holding
23 company and, if so, details around that.

24 Q Okay. And who forwarded this e-mail to you?

25 A An individual from the FDIC.

Course - Direct (Bar)

89

1 Q Okay. And did you respond -- and who is that individual
2 who -- who forwarded it to you?

3 A Bill Baxter.

4 Q Okay. And how did -- how did you know -- oh, did you
5 know Bill Baxter?

6 A Yes, I did.

7 Q Okay. And how did you know him?

8 A Bill was occasionally the FDIC representative on the TARP
9 CPP Council, and so I would meet him at Council meetings.

10 Q Okay. And did you respond to his e-mail?

11 A Yes, I did.

12 MS. PERRY: And if we could take a look at that,
13 please.

14 BY MS. BARRY:

15 Q And what -- what do you say to him? And you can read
16 that.

17 A "To avoid having both agencies," and by that I meant the
18 FDIC and the Federal Reserve, "contact the institution,"
19 meaning Nova Financial Holdings, "to ask the same question I
20 was going to hold off on contacting them until the FDIC
21 reached out to them."

22 But at the same time in this e-mail I notified the
23 FDIC that the Philadelphia Fed had placed the parent under an
24 enforcement action, a supervisory letter, in conjunction with
25 the three rating, and I provided a copy of that letter to Mr.

Course - Direct (Bar)

90

1 Baxter with the FDIC.

2 Q Okay. Now, in -- in -- sometime in December of 2009, and
3 we could take that down, please, did you have a conversation
4 with Brian Hartline?

5 A Yes, I did.

6 Q And who is Brian Hartline?

7 A The President and CEO of Nova Financial Holdings.

8 Q Okay. And do you know if he has those same titles with
9 Nova Bank?

10 A I believe he does.

11 Q And what was this conversation about?

12 And I'll turn your attention to Government's Exhibit
13 142, which has already been moved into evidence.

14 A By this time, December 15th, I had concluded my primary
15 rotation at the Board in Washington, and I was back in my role
16 of the Philadelphia Fed as the officer over enforcement.

17 I was working with my enforcement manager, Joe
18 Wilcox, who joined me on a call with Mr. Hartline to discuss
19 whether or not Nova Financial Holdings was in compliance with
20 the June 2009 supervisory letter.

21 Q Okay.

22 MS. BARRY: If we can publish 142, please. Thank
23 you.

24 BY MS. BARRY:

25 Q Okay. So the purpose -- what was the purpose of calling

Course - Direct (Bar)

91

1 Mr. Hartline?

2 A One of the criteria in the June supervisory letter was
3 that Nova Financial Holdings was not to pay any dividends on
4 its stock or interest on its trust-preferred securities unless
5 its subsidiary bank was well-capitalized.

6 Because the bank wasn't well-capitalized, we were
7 calling Mr. Hartline to confirm that they had in fact not paid
8 any dividends or interest during the period since the
9 enforcement action had been in place.

10 Q Okay. And during this conversation with defendant
11 Hartline what -- did he bring up anything related to TARP?

12 A Yes, he did.

13 Q And what did he say?

14 A He said that he had had a disturbing conversation with
15 the FDIC where he learned that the institution's TARP
16 application might not be approved after all.

17 Q And what was your response to that?

18 A We explained the impact that the enforcement action would
19 have on the TARP application.

20 Q And what was that?

21 A Because Nova Financial Holdings was not allowed to pay
22 interest on it -- on its subordinated debt or dividends on its
23 stock as a result of the enforcement action, it also meant
24 that they would not be able to pay dividends on any TARP
25 Capital Purchase Program stock that they may have received

Course - Direct (Bar)

92

1 from the -- or issued to the Treasury.

2 And there would be implications for the Treasury if
3 they were to make an investment knowing they would not be able
4 to receive dividends on it.

5 Q Okay. And do you know whether or not additional capital
6 into the bank would have any impact on its ability to pay
7 dividends?

8 MR. EGAN: Objection.

9 MS. BARRY: If she knows.

10 THE COURT: If you know.

11 THE WITNESS: If the institution became
12 well-capitalized, then under the supervisory letter it would
13 be allowed to resume -- the holding company would be allowed
14 to resume paying dividends.

15 BY MS. BARRY:

16 Q And do you know whether or not Nova Bank was -- was
17 provided or was approved for final TARP funding?

18 A No, they were not.

19 Q Okay. I'd like to show you what's been marked as
20 Government's Exhibit 150.

21 MS. BARRY: And -- and may it be published, Your
22 Honor?

23 THE COURT: Yes.

24 BY MS. BARRY:

25 Q Okay. And looking at this -- this top e-mail from you,

Course - Direct (Bar)

93

1 and what is -- what is this e-mail?

2 A This e-mail is a notification from me to the officer at
3 the Board who was the primary representative on the TARP CPP
4 Council for the Federal Reserve, Kevin Bertsch, updating him
5 on the status of Nova Financial's TARP CPP application.

6 Q Okay. And what -- what do you say?

7 A I had received information from the FDIC and what's --
8 I'll call --

9 Q If you could just read it. You can just read the e-mail.

10 A Okay.

11 Q If you can read it. Is it -- can you make it out on the
12 screen?

13 A I can make it out.

14 So I'm summarizing that the application was
15 originally presented to the Interagency Council on June 10th
16 of 2009 and received a three to one vote with the FRB
17 recommending denial, that the -- I note that the approval
18 votes were contingent on raising 15 million in outside
19 capital, and although the institution has reportedly received
20 the capital, some of it was contingent on receiving TARP
21 funds. Further, the parent has deferred the interest on its
22 trust-preferred securities as the bank is only adequately
23 capitalized, and the bank's condition has deteriorated since
24 approval, and the FDIC had conducted a subsequent exam, and
25 the preliminary exam ratings were three four two four three

Course - Direct (Bar)

94

1 two three (phonetic), which means the bank would be less than
2 satisfactory, and the MO -- the FDIC is contemplating a -- an
3 enforcement action, a memorandum of understanding.

4 All of this -- I was giving Mr. Bertsch a heads up
5 that all of this information was going to be summarized in a
6 decision memo that Mr. Baxter from the FDIC would be sending
7 this afternoon -- that afternoon, recommending denial --

8 Q Okay.

9 A -- of the application.

10 Q And what is the date of this e-mail?

11 A December 17th.

12 Q Okay. And based on the information that you had did
13 you -- were you ever made aware that any part of the \$15
14 million contingency was money that was borrowed from the bank?

15 A No, I did not have that information.

16 Q Would that be information that was important to the CPP
17 Council?

18 MR. EGAN: Objection.

19 THE COURT: Sustained.

20 BY MS. BARRY:

21 Q Do you know whether or not the CPP Council ever
22 considered that any part of the \$15 million contingency was
23 money that was borrowed from the bank?

24 MR. EGAN: Objection.

25 THE COURT: Overruled.

Course - Cross (Ega)

95

1 THE WITNESS: The CPP Council did not explicitly
2 discuss that because, as supervisors, we would have expected
3 that would not have occurred.

4 MS. BARRY: No further questions, Your Honor.

5 THE COURT: You may cross examine.

6 MR. EGAN: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. EGAN:

9 Q Afternoon, Ms. Course

10 A Good afternoon.

11 Q You explained this process -- and I hate to do this
12 again, but I just want to make sure we've got it straight.

13 So the application is filed, right, for TARP funds.

14 A Yes.

15 Q To the CPP, correct?

16 A The application is filed with the primary regulator of
17 the bank and the holding company in this case.

18 Q Okay. And that's like this two-page application. You've
19 seen it, right?

20 A Yes.

21 Q And then it's up to the FDIC whether they want to
22 recommend that that go to the CPP Council for approval,
23 correct?

24 A Yes.

25 (Transcriber change)

1 Q And in this case the FDIC made that decision to recommend
2 that it go to the CPP Council before -- sometime around
3 February of 2009, correct?

4 A I don't have knowledge about when they made the decision
5 to make a recommendation.

6 Q Well if there was information that the CPP Council's
7 first consideration was in February, it would have had to have
8 been before then, right?

9 A I believe the CPP Council's first consideration was the
10 notational vote in April.

11 Q Okay. And -- that's fine. A notational vote, that's
12 where people who aren't in the same room vote about something,
13 right?

14 A That's correct.

15 Q So the information they need to make that decision is
16 presented to them, and they make this decision based on that
17 information that's presented to them, right?

18 A Based on that information and other information they may
19 have.

20 Q Right. But they're in their office at the time?

21 A Correct.

22 Q They're not all in the same room?

23 A Correct.

24 Q Just kind of like walking about the approval?

25 MS. BARRY: Objection.

Course - Cross/Ega

97

1 THE COURT: Sustained.

2 BY MR. EGAN:

3 Q At that time they said we don't have enough information,
4 right? In April.

5 A In April the Federal Reserve recommended denial, and the
6 other agencies asked for additional information.

7 Q Well the Federal Reserve always recommended denial,
8 didn't they?

9 MS. BARRY: Objection.

10 THE COURT: Sustained.

11 BY MR. EGAN:

12 Q Well, okay, there was a notational meeting in April and
13 the Federal Reserve recommended denial, correct?

14 A Of this application, yes.

15 Q I only meant this application. I'm sorry.

16 A Um-hum.

17 Q In June of 2009, June 10th, there was a meeting, which I
18 believe you were at, right?

19 A Yes.

20 Q And the Federal Reserve recommended denial then, correct?

21 A Yes.

22 Q And no matter what about this capital, they didn't care,
23 it didn't make a difference to you, correct?

24 A Even considering the fact of the potential capital
25 injection, the Federal Reserve felt that the application

1 merited denial.

2 Q And in fact, the capital was moot to your decision,
3 wasn't it?

4 A Kevin Bertsch, the associate director of the board was
5 the one making the final decision. So I can't speak to what
6 may have been critical in his mind.

7 Q Well, do you remember meeting with agents in this case?

8 A I spoke with agents.

9 Q Yeah, on November 18th of 2015. Do you remember that?

10 A I don't recall if it was November 8th, but --

11 Q But you remember you met with them.

12 A I had conversations with them.

13 Q And do you remember telling them that the capital was
14 moot to you on the decision to recommend denying Nova Bank?

15 A I don't recall mentioning that.

16 Q But it didn't make any difference to you, did it?

17 A If the institution had raised sufficient capital to
18 address all of the weaknesses at the bank, that definitely
19 would have made a difference to us.

20 Q Well, sure, if they raised \$200 million of capital that
21 would have made a difference, right?

22 A I don't know whether 200 million would have been
23 sufficient.

24 Q But \$15 million was not going to change the Federal
25 Reserve's mind, correct?

Course - Cross/Ega

99

1 A 15 million, correct, was not sufficient to the Federal
2 Reserve to warrant anything other than denial.

3 Q So if you were to say it was moot, that would be an
4 accurate statement, correct?

5 A I suppose so.

6 Q Now we're in the process -- I want to get back to that.

7 A Okay.

8 Q So the CPP Council then meets, right? And they -- first
9 they have their notational meeting, as you call it.

10 A Correct.

11 Q And then they have a real live meeting where they sit in
12 the same room, right?

13 A Correct.

14 Q And at that meeting, they make a recommendation, correct?

15 A Which meeting are you referring to?

16 Q Let's have Government 30. I was trying to do it without
17 exhibits to move it a little quicker.

18 A Okay.

19 Q But I guess we're going to need them.

20 MR. EGAN: If we could have G-30, please?

21 THE WITNESS: Okay.

22 BY MR. EGAN:

23 Q You recognize that, right?

24 A Yes.

25 Q That's the CPP Council review decision sheet, correct?

Course - Cross/Ega

100

1 A Yes.

2 Q Right?

3 A Yes.

4 Q And that's from June 10th, 2009?

5 A Um-hum.

6 Q Correct?

7 A Correct.

8 Q And it says:

9 "Council member recommendation."

10 Correct?

11 A Correct.

12 Q So what sometimes is being called an approval here is
13 actually just a recommendation, right?

14 A Correct. A recommendation for approval to the Treasury
15 Investment Committee.

16 Q Right. Because the CPP doesn't have the -- yeah, the CPP
17 Council doesn't have the authority to make this decision,
18 correct?

19 A The final decision on the investment is made by
20 Treasury's Investment Committee.

21 Q And that's a decision that wasn't made until December of
22 2009, correct?

23 A Correct.

24 Q Now at this meeting on June 10th, 2009, you had
25 information that some of the other people didn't have,

Course - Cross/Ega

101

1 correct?

2 A Correct.

3 Q And that information was that the holding company was
4 about to be downgraded, correct?

5 A Was downgraded that day, yes.

6 Q Was downgraded that very -- the very day they make this
7 approval, the holding company was downgraded?

8 A Yes.

9 Q And you pass that on to Mr. Bertsch, correct?

10 A Yes.

11 Q And you knew at that point that that meant they weren't
12 going to be able to pay dividends, right?

13 A We had not yet -- the Federal Reserve Bank of
14 Philadelphia had not yet issued the enforcement action, but we
15 knew that it was likely.

16 Q But you knew that that was going to be issued, right?

17 A I knew that it was likely that it was going to be issued,
18 yes.

19 Q Sure. And in order to pay back the TARP, you have to pay
20 dividends, right?

21 A Paying back TARP wasn't contingent on paying dividends on
22 TARP.

23 Q Okay. I'm not going to get into the weeds of that one.

24 A Okay.

25 Q In any event, it was very important, and in fact it was

Course - Cross/Ega

102

1 one of the reasons that you ultimately recommended that this
2 be denied, correct?

3 A Yes.

4 Q And that's why Mr. Bertsch voted to disapprove that very
5 day, correct?

6 A Yes.

7 Q And that fact never changed once during this entire
8 process, did it?

9 A His disapproval vote in June was consistent with his
10 disapproval vote at the April notational vote.

11 Q No, I mean, they were never able to pay dividends during
12 the entire time either.

13 A The bank remained less than adequately capitalized, and
14 did not ask permission of the Federal Reserve to pay any
15 dividends.

16 Q So they couldn't?

17 A So they could not.

18 Q And what -- that's the whole -- we were talking about the
19 holding company there, because that's what you guys regulate,
20 right?

21 A Um-hum.

22 Q The FDIC regulates the bank.

23 A Yes.

24 Q And the FDIC regulates the bank so issues at the bank
25 itself are covered by FDIC regulations, right?

Course - Cross/Ega

103

1 A Yes.

2 Q And the holding company has issues there covered by your
3 regulations?

4 A Yes.

5 Q So regulations that Mr. Bertsch were to speak to, they
6 would apply to the holding company, right?

7 A Yes.

8 Q But they wouldn't apply to the bank?

9 A Correct.

10 Q I want to just quote you here, because on direct
11 examination, and this refers to the bank, you mentioned the
12 fact that Nova filed a report indicating that it was going to
13 be -- have to become less well capitalized because of this
14 OTTI issue, remember that?

15 A Yes.

16 Q So Nova's the one who told -- they filed a call report
17 telling the Government that, right?

18 A Correct.

19 Q You also said:

20 "Council relied on what the FDIC told it."

21 Correct?

22 A Yes.

23 Q And at this meeting, the FDIC had a representative there,
24 right?

25 A Yes.

Course - Cross/Ega

104

1 Q It's Mr. Hunter, he was here in the hallway a little
2 earlier, you saw him? Maybe, maybe not. Okay. Do you know
3 Mr. Hunter?

4 A I haven't seen him for six years.

5 Q It was a long time ago this all happened, right? But Mr.
6 Hunter makes this presentation, correct?

7 A Um-hum.

8 Q And all -- and this recommendation that came out June
9 10th is based on what he says, right?

10 A And other information that the council members may have.

11 Q Right. And he talked about an investor investing \$15
12 million, a proposed investment of \$15 million, right?

13 A Um-hum.

14 Q But he never said anything about it being contingent on
15 the acquisition of an insurance company named DVFG, did he?

16 A I don't have any recollection of a statement such as
17 that.

18 Q Now I'll fast-forward quite a bit to December.

19 MR. EGAN: And if we could have Government Exhibit
20 142.

21 BY MR. EGAN:

22 Q This is your record of a phone call that you had with Mr.
23 Hartline, correct?

24 A Yes.

25 Q And Mr. Hartline had found out essentially that day that

Course - Cross/Ega

105

1 the TARP funds were not going to be forthcoming, correct?

2 A I don't know if it was that day. I believe he said
3 recently.

4 Q Well actually the hold was placed on the fourteenth,
5 right?

6 A Not --

7 MS. BARRY: Objection.

8 THE COURT: Just a moment, please.

9 MR. EGAN: May I have a moment?

10 THE COURT: Yes, sir.

11 (Pause)

12 MR. EGAN: The Court's indulgence.

13 THE COURT: Yes, sir.

14 (Pause)

15 BY MR. EGAN:

16 Q Well let me ask you this question. You know what a hold
17 is, right?

18 A In this context, I'm not sure.

19 Q You don't recall that a hold was placed on this
20 application prior to the actual rejection?

21 A I know of the hold process as it relates to the TARP
22 Program, but I don't know if or when a hold was placed on this
23 application.

24 Q But you do know that by December 15th Mr. Hartline had
25 been advised that the -- it was highly unlikely that he was

Course - Cross/Ega

106

1 getting these -- that his bank was getting -- that Nova Bank,
2 excuse me, was getting these TARP funds?

3 A Yes.

4 Q And he calls, and he's not happy about it, obviously,
5 correct?

6 A Well we called him.

7 Q I'm sorry, yeah, you called him. But he wasn't happy
8 about it?

9 A He was concerned, yes.

10 MS. BARRY: Objection.

11 THE COURT: Sustained.

12 MR. EGAN: He was concerned -- your word, he was
13 concerned.

14 BY MR. EGAN:

15 Q And what you explained to him, right, first of all, you
16 had to briefly discuss the eligibility requirements for TARP,
17 correct?

18 A I don't know whether we had to, but we did.

19 Q And specifically, that a bank can't use the TARP funds to
20 become well capitalized, it has to already be well
21 capitalized?

22 A Yes.

23 Q So that was something you had to explain to him at that
24 point?

25 A I don't know whether we had to, but we chose to.

Course - Cross/Ega

107

1 Q Well you felt the need to.

2 A Um-hum.

3 Q Correct?

4 A Yes.

5 Q And then you pointed out that under the current
6 supervisory letter they can't pay TPS interest, correct?

7 A Correct.

8 Q And that was another reason why the application would be
9 denied?

10 MS. BARRY: Objection.

11 THE COURT: Sustained.

12 BY MR. EGAN:

13 Q Well if we go down to the sentence that begins "Given."
14 "Given the pari passu status of these instruments,
15 in order to service the TARP interest all the TPS payments
16 must be current."

17 Correct?

18 A Yes.

19 Q That means if those payments aren't current, you're not
20 going to be able to get TARP funds, right?

21 A It means that they would not be allowed to pay the TARP
22 dividends unless all of the trust preferred securities
23 payments were current, and it would be up to the Treasury to
24 make the decision on whether or not they wanted to invest
25 knowing that that restriction exists.

Course - Cross/Ega

108

1 Q Well you were involved in this process quite a bit,
2 right?

3 A I was involved in the council, I wasn't involved in any
4 of the Treasury Investment Committee's discussions.

5 Q So you don't really know what the Treasury Investment
6 Committee discussed?

7 A I was not involved in their discussions, no.

8 Q You don't really know what basis they used to deny this
9 application?

10 A The ultimate denial of this application I believe was
11 based upon the FDIC's recommendation to the council on
12 December 17th that the application be denied.

13 Q And that recommendation actually was asked for by the
14 council, wasn't it?

15 A I don't have any direct --

16 MS. BARRY: Objection.

17 THE WITNESS: -- knowledge that the council asked
18 for a recommendation.

19 BY MR. EGAN:

20 Q If you don't know, that's fine. But in any event, you
21 were shown Government Exhibit 150, right?

22 MR. EGAN: And if we could see that?

23 THE WITNESS: Yes.

24 BY MR. EGAN:

25 Q And on December 17th, you entered a notational vote to

Course - Cross/Ega

109

1 deny the application, correct?

2 A On December 17th, I advised Mr. Bertsch that the request
3 for the notational vote was going to be coming and gave him
4 the background. I didn't have the authority to enter a
5 notational vote on behalf of the Fed.

6 Q Okay. So this is your telling Kevin this is what's going
7 on, and this is what your recommendation to him basically?

8 A I gave him the background and advised him that the FDIC
9 would be sending a decision memo recommending denial.

10 Q Okay. And then if you look at that sentence that says:

11 "Although the institution has reportedly received
12 the capital, some of it was contingent on receiving TARP
13 funds."

14 Do you see that?

15 A Yes.

16 Q That was your understanding of the circumstances at that
17 point?

18 A Based in part upon my discussion with Mr. Hartline two
19 days prior.

20 Q And based also on information from the FDIC?

21 A Yes.

22 Q Okay. And essentially you point out here that there was
23 recently an exam and the bank was downgraded, correct?

24 A Yes.

25 Q And that was -- the reason you're providing this

Course - Cross/Ega

110

1 information is so he knows what he needs to know to make his
2 own vote?

3 A I'm giving him this context in an abbreviated format, and
4 he would receive the recommendation from the FDIC, which would
5 have more detail.

6 Q Okay. I want to talk a little bit about, you were asked
7 a number of questions about the holding company?

8 A Yes.

9 Q The holding company is a separate entity, correct?

10 A Separate from Nova Bank.

11 Q From the bank.

12 A Yes.

13 Q And in fact the holding company can own more than one
14 thing, correct?

15 A Yes, they can.

16 Q And, indeed, there was a period of time where Nova
17 holding company owned both Nova Bank and Pennsylvania Business
18 Bank, correct?

19 A Correct.

20 Q And when funds are invested in Nova holding company, the
21 board of directors has to make a decision as to where to put
22 that money, correct?

23 A Correct.

24 Q And that's ultimately a decision that's made by the board
25 by a vote, correct?

Course - Cross/Ega

111

1 A Yes.

2 Q And they could decide to send the money to Nova Bank,
3 which is one of their subsidiaries, correct?

4 MS. BARRY: Objection.

5 THE COURT: Just a moment, please. Basis?

6 MS. BARRY: Speculation.

7 THE COURT: If she would know.

8 (Pause)

9 BY MR. EGAN:

10 Q Right?

11 A That's one decision they could make, yes.

12 Q And they can decide to keep it at the holding company?

13 A Yes.

14 Q And in fact, you would have preferred that they kept more
15 money at the holding company, right?

16 A With our expectation for the holding company to serve as
17 a source of strength for the bank, our preference is that they
18 do what would need to be done to put the bank back in a well
19 capitalized and satisfactory financial condition.

20 Q So your preference would be that, if the holding company
21 were to receive an investment, that they provide it to the
22 bank?

23 A To get the bank back in a satisfactory financial
24 condition, yes.

25 Q Thank you.

Course - Cross/Dun

112

1 MR. EGAN: I have no further questions, Your Honor.

2 MR. DUNCAN: May I have a moment, Your Honor,
3 please?

4 THE COURT: Surely.

5 MR. DUNCAN: Thank you, Your Honor. May I proceed?

6 THE COURT: Yes, sir.

7 MR. DUNCAN: Very briefly.

8 CROSS-EXAMINATION

9 BY MR. DUNCAN:

10 Q Good afternoon, Ms. Course.

11 A Good afternoon.

12 Q My name's Russell Duncan. I represent Mr. Barry Bekkedam
13 over here. Ma'am, would it be fair to say that you have
14 substantial experience in the area of banks?

15 A Yes.

16 Q Back in the period 2008, 2009 that you're testifying
17 about, you'd agree that a lot of banks had a lot of issues,
18 right?

19 A That's correct.

20 Q But the first time anyone from the Government ever spoke
21 to you about Nova Bank for this investigation was back in
22 January of 2013, correct?

23 MS. BARRY: Objection.

24 THE COURT: Basis?

25 MS. BARRY: Relevance.

Course - Redirect/Bar

113

1 THE COURT: Overruled.

2 THE WITNESS: Yes.

3 BY MR. DUNCAN:

4 Q Our client, Mr. Bekkedam, you've never met him, have you?

5 A No, I've never met him.

6 Q Have you ever spoken to him?

7 A No, I have not spoken with him.

8 Q Have you ever communicated with Mr. Bekkedam in any way
9 regarding Nova Bank's TARP application?

10 A No, I haven't.

11 MR. DUNCAN: Thank you. Very nice to meet you.

12 REDIRECT EXAMINATION

13 BY MS. BARRY:

14 Q Ms. Course, is the viability of the bank what CPP Council
15 reviewed?

16 A Yes, it is.

17 Q Okay.

18 MS. BARRY: No further questions.

19 MR. EGAN: No recross.

20 MR. DUNCAN: No, thank you, Your Honor.

21 THE COURT: Thank you. Madam, you may step down.
22 Watch your step, please.

23 THE WITNESS: Thank you.

24 THE COURT: We will recess for lunch until 1:50 this
25 afternoon. 1:50 this afternoon.

Course - Redirect/Bar

114

1 THE CLERK: All rise.

2 (Jury Exits)

3 THE COURT: Counsel, could you submit your proposed
4 points of charge in Microsoft Word format, please?

5 ALL COUNSEL: Yes, Your Honor.

6 UNIDENTIFIED COUNSEL: By Monday good enough?

7 THE COURT: Fine. Thank you.

8 MS. BARRY: Thank you.

9 THE COURT: We're adjourned.

10 (Court in recess 12:21 p.m. to 1:56 p.m.)

11 THE COURT: Ready?

12 UNIDENTIFIED COUNSEL: One second.

13 UNIDENTIFIED COUNSEL: May we approach at sidebar
14 briefly, off the record?

15 THE COURT: Yes, sir.

16 (Sidebar Conference off the Record)

17 THE COURT: You all may be seated.

18 (Pause)

19 THE CLERK: All rise.

20 (Jury Enters)

21 THE CLERK: Ladies and gentlemen, we are back on the
22 record.

23 THE COURT: Good afternoon, you may be seated.

24 MS. BARRY: Your Honor, the United States calls
25 William Gaunt.

Gaunt - Direct/Bar

115

1 WILLIAM GAUNT, GOVERNMENT WITNESS, SWORN

2 THE CLERK: Please state and spell your name for the
3 record?

4 THE WITNESS: William Gaunt.

5 THE CLERK: Spell your last name for the record.

6 THE WITNESS: G-A-U-N-T.

7 THE COURT: You may proceed.

8 MS. BARRY: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MS. BARRY:

11 Q Good afternoon, Mr. Gaunt.

12 A Good afternoon.

13 Q Are you currently working?

14 A I'm retired.

15 Q Okay. And where were you working before your retirement?

16 A The Federal Reserve Bank of Philadelphia.

17 Q And how long were you with the Federal Reserve Bank of
18 Philadelphia?

19 A 1999 through the end of 2010.

20 Q And in 2009, what was your position with the Federal
21 Reserve Bank of Philadelphia?

22 A I was an officer, assistant vice president with
23 responsibility for applications that were filed with the
24 Reserve Bank, and also for structure reporting.

25 Q Okay. And were you familiar with an institution called

Gaunt - Direct/Bar

116

1 Nova Financial Holdings?

2 A Yes.

3 Q Okay. And was that -- do you recall whether or not that
4 was an institution that was regulated by the Federal Reserve
5 Bank of Philadelphia?

6 A At the holding company level, yes.

7 Q Okay. And do you know if Nova Financial Holdings was the
8 parent to Nova Bank?

9 A That sounds correct.

10 Q Okay. And do you know what agency regulated Nova Bank?

11 A I believe both the Commonwealth of Pennsylvania
12 Department of Banking and the FDIC.

13 Q Okay. And did the agencies share information?

14 A Yes.

15 Q Okay. And I'd like to show you what's been marked as
16 Government's Exhibit 6A.

17 MS. BARRY: And I believe this has been moved into
18 evidence. May it be published, Your Honor?

19 THE COURT: Yes.

20 BY MS. BARRY:

21 Q And looking at 6A --

22 A Okay.

23 Q -- and if you look at the bottom email, is this an email
24 to you, William Gaunt?

25 A Actually, it looks like it's from me to Jim DePowell

Gaunt - Direct/Bar

117

1 (phonetic)?

2 Q I'm sorry, the bottom email, sir.

3 A Oh, I'm sorry. Yes.

4 Q Okay.

5 A Yes.

6 Q And who was that from?

7 A A man by the name of Jeffrey Hanuscin, I guess it is.

8 Q Okay. And what information is he providing to you?

9 A A TARP application.

10 Q And is this his -- and so are you on notice at this point

11 on October 27, 2008 that Nova has filed a TARP application?

12 A Correct.

13 Q And then do you forward this email to some of the folks
14 in your office?

15 A Yes, it would have circulated broadly in the office.

16 Q Okay.

17 MS. BARRY: If we could take that down, please?

18 BY MS. BARRY:

19 Q Now did you have any involvement with Nova Bank's TARP
20 application?

21 A The unit that I was responsible for would have been
22 involved in processing part of it.

23 Q Okay. Did you have any involvement with that?

24 A As the person with responsibility for the unit, I would
25 of.

Gaunt - Direct/Bar

118

1 Q Okay. And do you have responsibility for change in
2 control applications?

3 A Yes.

4 Q And do you know whether Nova Bank applied for a change in
5 control on -- in about July of 2009?

6 A I believe they did.

7 Q Okay. And I'd like to show you what's already been moved
8 into evidence, Government's Exhibit 64.

9 MS. BARRY: And may it be published?

10 THE COURT: Yes.

11 MS. BARRY: Okay. And may I bring the witness a
12 hard copy? It may be easier.

13 THE COURT: Very well.

14 MS. BARRY: Thank you, Your Honor.

15 BY MS. BARRY:

16 Q Okay. And so looking at Government's Exhibit 64, is this
17 -- what is this?

18 A We're being advised of the status of the investment that
19 Nova is making, it looks to me.

20 THE COURT: Could you keep your voice up, sir?
21 Speak more to the microphone, please.

22 THE WITNESS: I'm sorry?

23 THE COURT: Speak more into the microphone, please.

24 THE WITNESS: Yes, sir.

25 THE COURT: Thank you.

Gaunt - Direct/Bar

119

1 BY MS. BARRY:

2 Q Well is it -- the change in control application attached
3 to this letter?

4 A Yes. It looks like, and supported by the interagency
5 biographical and financial information.

6 Q Okay. And let's just take a look at the letter that was
7 forwarded with the information. Could you -- what is the date
8 of this letter, please?

9 A July 21, 2009.

10 Q Okay. And is this letter to your attention?

11 A Yes.

12 Q Okay. And can you please read the first paragraph of
13 this letter?

14 A (Reading)

15 "Dear Mr. Gaunt, please be advised that on June 30,
16 2009 Mr. Levin invested \$5 million of his proposed 18 million
17 investment in Nova Financial Holdings, Inc. His current
18 percentage of investment is 9.01 percent. The additional 13
19 million investment will put Mr. Levin's percentage at
20 approximately 24.2 percent, which requires the approval of the
21 Federal Reserve Bank."

22 Q Okay. And so is this \$18 million investment going to
23 make Mr. Levin's percentage approximately at 24.2 percent
24 ownership of the company?

25 A That's the way I would read that.

Gaunt - Direct/Bar

120

1 Q Okay. And who signed this letter?

2 A Cheryl Kim Hartline, corporate secretary of Nova
3 Financial Holdings, Inc.

4 Q Now if we could please take a look at the change in
5 control application, and specifically page six of 35.

6 A Okay.

7 Q And if we could -- item seven, what is one of the -- well
8 does the change in control application request the source of
9 the funds from the investor?

10 A Yes.

11 Q Okay. And who is the investor here?

12 A George G. Levin.

13 Q And so is he the applicant for the change in control
14 application?

15 A I guess you could say that, yeah.

16 Q Okay. And what is the total purchase price?

17 A \$18 million.

18 Q Okay. And what's indicated as far as the source and
19 amount of funds?

20 A One-half from personal finances, and one-half from
21 borrowed funds.

22 Q Okay. And if we go down to Section B there, can you read
23 what Section B says if -- regarding any portion of these
24 funds?

25 A (Reading)

1 "If any portion of the funds or other consideration
2 for the acquisition will be borrowed, indicate the name of
3 each borrower, name and address of each lender, amount
4 financed, collateral to be pledged, and terms of the
5 transaction, including interest rates, amortization
6 requirements, guarantors, endorsers, co-makers, and any other
7 arrangements, agreements and understandings between and among
8 the parties, if applicable, submit a copy of any loan
9 commitment letter."

10 Q Okay. And why was the source of funds -- well let me ask
11 you this. Was the source of funding by the investor to make
12 the purchase of this \$18 million, was that important for the
13 Federal Reserve to know?

14 A Yes.

15 Q And why?

16 A It has to do with the, you know, the integrity of the
17 investor, and it's one of the things we would -- we would
18 certainly look at carefully.

19 Q Okay. Now in processing these change in control
20 applications, did you have staff that helped you with
21 processing them?

22 A Yes.

23 Q Okay. And was there a manager sort of overseeing the
24 processing of the applications?

25 A Yes, there was.

Gaunt - Direct/Bar

122

1 Q And who was that?

2 A Jim DePowell.

3 Q And did Mr. DePowell keep you informed and updated as to
4 the change in control applications that were being processed?

5 A Yes.

6 Q Okay. And I'd like you to turn your attention to
7 Government's Exhibit 66. And looking at 66, the bottom email,
8 is that an -- well what is it?

9 A It's an email that Jim sent to Michael Sextant (phonetic)
10 at the Board of Governors in Washington.

11 Q And are you copied on that?

12 A Yes.

13 MS. BARRY: Your Honor, the Government moves for the
14 admission of Government's Exhibit 66.

15 MR. EGAN: No objection.

16 MR. DUNCAN: No objection.

17 THE COURT: Admitted.

18 MS. BARRY: And may it be published, Your Honor?

19 THE COURT: Yes.

20 BY MS. BARRY:

21 Q Looking at this -- at this email, what is the date of the
22 email, please?

23 A July 23, 2009.

24 Q Okay. So does this appear to be about the same time as
25 the change in control application submission?

1 A Yes.

2 Q And if you read the long story short paragraph, what does
3 that say?

4 A It says:

5 "The bank has issues but is viable and needs more
6 capital. An existing large shareholder, George Levin, has
7 filed to increase his investment from \$5 million to \$18
8 million, or approximately 24.2 percent. He has a net worth in
9 excess of \$400 million, and we have initiated a name check.
10 We do not think this is worthy of Board Action, but
11 technically the target is rated a "3." And we thought we
12 should run it past you. Let us know. Thanks."

13 Q Okay. And is that because -- what does that mean, the
14 target is rated a three?

15 MS. BARRY: Take that down, please.

16 THE WITNESS: That's the overall safety and
17 soundness grading that has been assigned by a regulator.

18 BY MS. BARRY:

19 Q And is that -- is three less than satisfactory?

20 A It's my recollection.

21 Q Okay. Now were you provided information from the bank
22 about George Levin's source of funding?

23 A Yes.

24 Q Okay. And I'd like to show you what's been marked as
25 Government's Exhibit 82.

Gaunt - Direct/Bar

124

1 MS. BARRY: And I believe it's been admitted, Your
2 Honor, so may it be published?

3 THE COURT: Yes.

4 MS. BARRY: Okay.

5 BY MS. BARRY:

6 Q And looking at Government's Exhibit 82 --

7 MS. BARRY: And may I approach, Your Honor, just to
8 make it easier for the witness?

9 THE COURT: Certainly.

10 MS. BARRY: It's a multi-paged document.

11 THE COURT: Certainly.

12 BY MS. BARRY:

13 Q Is -- what is 82? And you can look at the whole
14 document.

15 A It looks like a copy of an email.

16 Q Okay. And are there attachments to that email?

17 A Yes.

18 Q Okay. And so let's take a look at the email itself,
19 please?

20 A Okay.

21 Q And who is this email from?

22 A Kim Hartline.

23 Q Okay. and what does it state her title is?

24 A Corporate Secretary/Administrator.

25 Q And what does that say underneath that Nova?

1 A Nova Bank.

2 Q Okay. And what is the date of this email, please?

3 A September the 8th, 2009.

4 Q Okay. And can you please read the second paragraph that
5 says "Please be advised?"

6 A (Reading)

7 "Please be advised that Nova has received formal
8 approval of our CPP application from the U.S. Treasury for a
9 minimum of \$13.5 million, contingent upon our raising a
10 minimum of \$10 million of common equity. Nova is currently
11 working under a tentative schedule to close a capital
12 investment of \$13 million for Mr. Levin by September 24th,
13 provided he receives regulatory approvals, and close on our
14 CPP funding on September 25th, the last Friday of September."

15 Q So this receives regulatory approval, do you know whether
16 or not that means the change in control? Was that your
17 understanding, I guess?

18 A I'm not clear that that would be the case.

19 Q Okay. But was there a change in control pending for Mr.
20 Levin?

21 A Yes.

22 Q And looking at the third page of this --

23 A Just if I can stop you, because I'm not sure I know what
24 the acronym CPP stands for.

25 Q Okay.

Gaunt - Direct/Bar

126

1 THE COURT: Stipulation, counsel?

2 MR. EGAN: His knowledge is what we're --

3 THE COURT: All right.

4 MS. BARRY: Okay.

5 BY MS. BARRY:

6 Q Looking at the third page of this exhibit, which is an
7 attachment to the email, what is this letter referencing? Why
8 don't you just read the first sentence?

9 A It says:

10 "Gentlemen, please see information that was provided
11 to us --"

12 Q No, I'm sorry, the third page.

13 A Oh, the third page?

14 Q And if you could read the first paragraph there?

15 "Reference" --

16 A (Reading)

17 "Reference your email dated August 17, 2009,
18 requesting that we identify the sourcing of funds for the
19 Levin investment in Nova Financial Holdings, Inc."

20 Q Okay. And so is this a -- does it go on to explain what
21 the source of the funding is for the change in control?

22 A It appears to be the case, yes.

23 Q Okay. In that explanation, is there anything about Mr.
24 Levin's investment, any portion of it being borrowed from Nova
25 Bank?

Gaunt - Direct/Bar

127

1 A I don't see anything referencing that.

2 Q And did you -- did the Federal Reserve Bank give approval
3 for Mr. Levin to acquire up to 24.2 percent of the shares of
4 Nova Financial Holding? Did you approve the change in control
5 application?

6 A I believe we did.

7 Q Okay. I'd like to show you what's been marked as
8 Government's Exhibit 100. And what is Government's Exhibit
9 100?

10 A It is an approval letter.

11 Q Okay. And whose -- and if we go to the second page, who
12 signed it?

13 A I did.

14 Q Okay.

15 MS. BARRY: The Government moves for the admission
16 of Government's Exhibit 100.

17 MR. EGAN: No objection.

18 MR. DUNCAN: No objection.

19 THE COURT: Admitted.

20 MS. BARRY: May it be published, Your Honor?

21 THE COURT: Yes.

22 BY MS. BARRY:

23 Q What is the date of this letter?

24 A October 19, 2009.

25 Q Okay. And what is in the re line?

Gaunt - Cross/Ega

128

1 A I'll read it. It says:

2 "Notification by George Gershen (phonetic) Levin to
3 acquire 24.2 percent of the shares of Nova Financial Holdings,
4 Inc., Berwyn, PA pursuant to the Change in Control Act of 1978
5 in Section 225.41 of Regulation Y."

6 Q Okay. Mr. Gaunt, before sending out this letter, were
7 you ever made aware that any portion of Mr. Levin's investment
8 to purchase 24.2 percent of the shares of Nova Financial
9 Holdings was money that was borrowed from Nova Bank?

10 A I was not aware of that.

11 Q Okay. Would that be something that you would remember?

12 A I believe I would.

13 MS. BARRY: No further questions, Your Honor.

14 THE COURT: You may cross-examination.

15 MR. EGAN: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. EGAN:

18 Q Good afternoon, sir.

19 A Good afternoon.

20 Q I believe you testified on direct examination that you
21 oversaw some people that were involved in the TARP approval
22 process, correct?

23 A That's correct.

24 Q But other than your oversight of them, you had no direct
25 involvement in the TARP approval process as it pertained to

1 Nova Bank, correct?

2 A Well I had -- I was the person who executed the approval
3 letter, so it officially came under my signature as the head
4 of the unit.

5 Q If Nova had been approved by the Federal Reserve for TARP
6 funds, you would have signed the --

7 A Oh, no, I'm sorry, you said TARP.

8 Q Yeah.

9 A Oh, no, I would not have been involved in the TARP. We
10 did -- we were involved in the process of moving paper and
11 applications, but it was being handled by other folks.

12 Q Right. So you had basically nothing to do with that?

13 A Correct. Sorry about that. Yes.

14 Q No worries. So all of the information that you received
15 and that you just discussed with Ms. Barry, none of that went
16 to the people who had anything to do with approving TARP,
17 correct? As far as you know.

18 A Of our application?

19 Q Yeah.

20 A I'd have to go back and check. It went to the FDIC
21 certainly, and the Commonwealth of Pennsylvania. But I'd have
22 to check. It doesn't make sense that it would, at first blush
23 at least.

24 Q So to your knowledge it didn't go there?

25 A To my knowledge, yeah.

Gaunt - Cross/Ega

130

1 Q Okay. That's all I was asking. Now but you were
2 involved in this change in control process?

3 A True.

4 Q And a change in control needs to be filed when an
5 investor goes over a certain level of ownership of stock,
6 correct?

7 A Yes.

8 Q So if I owned 9 percent of the stock, I don't need to
9 file a change in control application, right?

10 A Well it would depend who --it's a little more complicated
11 than that.

12 Q But there is a line there somewhere?

13 A There is a line, yes.

14 Q And in this case it was about 10 percent, right?

15 A I believe so, yeah.

16 Q So if in this case I own 9 percent of the stock, I
17 wouldn't have to file one of these, would I?

18 A You know, it would depend. I mean, it's -- it's -- a lot
19 of it depends on who the other investors are and the
20 relationship to the primary investor.

21 Q Understood.

22 MR. EGAN: Why don't we get up Government's 64,
23 please? And if it could be published?

24 BY MR. EGAN:

25 Q And you have that in front of you I believe, sir?

Gaunt - Cross/Ega

131

1 A Yeah. I'm not -- it's not showing up on the screen, but
2 let me find it. Yes. I have 64 in front of me.

3 Q Well just wait a second while the -- we've go one of
4 those fun computer things happening.

5 A Okay.

6 Q There we go. So if it's easier for you to look at the
7 paper copy, please, by all means do.

8 A Okay.

9 Q This is a letter that contains an application for change
10 in control, correct?

11 A Yes.

12 Q And that application for change in control is the
13 application of George Levin, correct?

14 A Yes.

15 Q And it says in the letter, that his -- and I'm looking
16 specifically at the second sentence, his current percentage of
17 investment is 9.01 percent, correct?

18 A Yes.

19 Q "The additional \$13 million investment will put Mr.
20 Levin's percentage at approximately 24.2 percent, which
21 requires the approval of the Federal Reserve Bank."

22 Do you see that?

23 A Um-hum.

24 Q So you would agree with me that his 9.1 percent didn't
25 need the approval?

Gaunt - Cross/Ega

132

1 A I mean, that's almost a legal conclusion, given the
2 complexity of these applications.

3 Q I see. But clearly the person who submitted this
4 believed that the change from nine to 24 is what required the
5 approval, correct?

6 MS. BARRY: Objection.

7 THE COURT: Sustained.

8 BY MR. EGAN:

9 Q This application when it was submitted was to increase --
10 for permission to increase his ownership from nine percent to
11 24 percent, correct?

12 A Well I don't know whether it was in increments or what,
13 but that seems to be the case.

14 Q Well let's go over it. The first sentence says:

15 "Please be advised that on June 30th, 2009, Mr.
16 Levin invested 5 million of his proposed \$18 million
17 investment."

18 Correct?

19 A Right.

20 Q (Reading)

21 "His current percentage is 9.01 percent."

22 Correct?

23 A Right.

24 Q (Reading)

25 "The additional \$13 million investment will put his

1 percentage at approximately 24.2 percent."

2 Correct?

3 A Yes.

4 Q So that would be -- I think we were -- it just was
5 increments, right? Maybe only two, but it's two increments,
6 correct?

7 A Yeah.

8 Q Okay. So they're filing this because he's putting \$13
9 million more in, which is going to make him a change in
10 control investor. Correct?

11 A I struggle with that a little bit, because there are
12 instances where even over five percent would require an
13 application. It's a very technical --

14 Q I understand, sir. And I'm not trying to get you to get
15 into the technicalities. But at least on the face of it,
16 that's what's happening here, right?

17 A On the face of it, that's what I would say.

18 Q Okay. I'm not looking for any legal conclusions, don't
19 worry.

20 A Okay.

21 Q If you could turn to page six, which you were shown by
22 Ms. Barry, in that first box.

23 A Um-hum.

24 Q You're being told that this application, right, that the
25 investment is going to be half from personal finances and half

1 from borrowed funds, correct?

2 A That's what it says.

3 Q Okay. And I believe Ms. Barry asked you if that was an
4 important issue for the Federal Reserve, correct?

5 A Yes.

6 Q And you said it was, because you wanted to know the
7 strength of the purchaser, correct?

8 A Yeah.

9 Q And when you submit one of these applications, it starts
10 a process, does it not?

11 A Yes.

12 Q And the applicant, that is Mr. Levin, by submitting the
13 application is agreeing to the process, correct?

14 A Yes.

15 Q He's basically saying, I want to be a change in control
16 investor, right?

17 A Right.

18 Q Therefore, you, Federal Reserve Board, you may now have
19 the right to investigate me so you can figure out if I deserve
20 to be one. Correct?

21 A Yes.

22 Q And the Federal Reserve Board takes that very seriously,
23 correct?

24 A It does, yeah.

25 Q They have investigators they send out in the field to do

1 investigations, right?

2 A May or may not. I'm not aware of this situation but --

3 Q Okay. But they certainly have --

4 A The integrity of the documents is of the utmost
5 importance.

6 Q Understood. But you also do an investigation, correct?

7 A I -- as an analyst who would be considering the
8 application. Whether there's actually an investigation, I'm
9 not sure I'd call it an investigation. There might be a
10 careful look in connection with the examination process that
11 would happen later as part of it.

12 Q And part of that careful look is to run a criminal
13 background check, right?

14 A There is, actually, yes.

15 Q And a credit check?

16 A Yes.

17 Q A credit check to see what loans they have out?

18 A I'm not aware. I was not the analyst on this case.

19 Q So it's safe to say you don't know precisely what the
20 analyst did in this case?

21 A Well I know generally what would have been done, but I
22 was not the analyst and I was not the manager supervising the
23 analyst.

24 Q Understood. So you're not the person doing it, or that
25 person's boss?

1 A Correct.

2 Q You're that person's boss's boss?

3 A Correct.

4 Q Okay. However, you do know that they have all of the
5 information of this applicant to reach out to them and ask
6 them any questions they want to, right?

7 A Yes.

8 Q And in fact in this case you actually did reach out to
9 the applicant and have discussion with them, correct?

10 A I am not aware.

11 Q Okay.

12 MR. EGAN: Well if we could have Government's
13 Exhibit 87, please? And this has been admitted, so you can
14 publish it. And if we could blow up the bottom email?

15 BY MR. EGAN:

16 Q And it's from you?

17 UNIDENTIFIED SPEAKER: It's not admitted.

18 MR. EGAN: It's not admitted? Can you un-publish
19 it, please? My apologies, Your Honor.

20 BY MR. EGAN:

21 Q That's an email from you to Frank Preve, right -- or F.
22 Preve at AOL. You probably don't remember him.

23 A Yes. What institution is he with?

24 Q You don't remember who he is, right?

25 A This is a while ago. Six years ago, amongst many, many

1 applications.

2 Q Fair to say, other than reading this stuff, you don't
3 really remember anything about this?

4 A About this, what's contained in this email?

5 Q About the whole -- this whole matter. Other than reading
6 what you've read to prepare for Court and talking to the
7 Government, do you really remember anything about this
8 process?

9 A About the specific --

10 Q About the Nova Bank --

11 A -- process as opposed --

12 Q Yeah.

13 A -- not particularly, to be honest with you.

14 Q Thank you. Anyway it is from you, right, the email?

15 A Yes.

16 Q And to this F. Preve, who we don't know who it's to.
17 It's also carbon copied to some other folks, a Bill Lenny,
18 (phonetic) William Lenny, at Federal Reserve, right?

19 A Yeah. Yes.

20 Q Jim DePowell at Federal Reserve, you just talked about
21 him?

22 A My guess is actually that Mr. Lenny's the author of this,
23 but he -- it was -- but I sent it. He was the analyst on this
24 case.

25 Q Okay. Well let's read it then, because I don't -- I

1 don't want -- let's read it, sir. It says:

2 "Mr Preve, this will confirm our telephone
3 conversation today in which you advised Mr. Levin will be
4 filing a second interagency biographical and financial
5 report."

6 See that?

7 A Um-hum. Yes.

8 Q And at the bottom it says, "Bill Gaunt."

9 A Yes, but we -- I would not have been calling Mr. Preve by
10 myself. There probably would have been a conference call, and
11 included on that call would have been Mr. Lenny, Mr. DePowell,
12 and probably this third person, Linda Tucker.

13 Q Okay. So what you're telling me is, you think that four
14 people from the Federal Reserve Board called up Mr. Preve?

15 A Yeah. I don't know who Mr. Preve is.

16 Q Well, sir --

17 A Why don't you refresh my recollection of who he is?

18 Q Well I'm not sure I can do that, sir. But if I would
19 represent to you that he was Mr. Levin's business manager,
20 would that refresh your recollection?

21 A It sounds right.

22 Q Okay. All I'm trying to establish here, sir, is that the
23 agency had direct contact with Mr. Levin and his agent.

24 Correct?

25 A That looks like we needed more biographical information.

Gaunt - Cross/Ega

139

1 Q Right. And --

2 A And financial information.

3 Q And you reached out to him and asked for it.

4 A That sounds correct.

5 Q Okay. And after that conversation, which is on Thursday,
6 September 17th, you received Government's Exhibit 89.

7 MR. EGAN: And if we go to page two of Government's
8 Exhibit 89. And you did admit this, correct? No? Okay.

9 BY MR. EGAN:

10 Q That's a letter from Mr. Levin to the Federal Reserve
11 Bank, correct?

12 A Yes.

13 Q And it is an updated interagency biographical financial
14 report, correct?

15 A Yes.

16 Q Which is what you guys were asking for in the phone call
17 from the day before, correct?

18 A That sounds right.

19 MR. EGAN: Now if we could go back to Government's
20 82.

21 BY MR. EGAN:

22 Q And you were shown this on direct examination, correct?

23 A Yeah.

24 Q That's an email from Kim Hartline to Mr. Moretz and you?

25 A Right.

Gaunt - Cross/Ega

140

1 Q This F. Preve is also copied?

2 A Right.

3 Q And it says:

4 "Nova is --"

5 And we're in the second paragraph, the second
6 sentence. It says:

7 "Nova is currently working under a tentative
8 schedule to close a capital investment of 13 million for Mr.
9 Levin."

10 Correct?

11 A A minimum of 13 million. Yeah.

12 Q Right. So what you're being told here is, we're going to
13 close another 13 million for Mr. Levin? Right?

14 A Right. Understand that just because I'm copied on this,
15 I mean, as the official head of the department, correspondence
16 really has to come to me, then it's disseminated to the people
17 who actually work on it.

18 Q So you're saying you might not have read it?

19 A Exactly.

20 Q Well when Ms. Barry showed it to you, did you say you
21 might not have read it? I missed that.

22 A I don't know if I was asked that question or not.

23 MR. EGAN: Well if we could go to page two --

24 BY MR. EGAN:

25 Q See in page three, which is the one you were shown? This

Gaunt - Cross/Ega

141

1 is a letter and we discussed -- you discussed with Ms. Barry.

2 This is a letter from this Frank Preve, correct?

3 A Yes.

4 Q And it's on George Levin's letterhead?

5 A Yes.

6 Q And he's telling you, correct, where he expects the money
7 to come from to pay for the change of control, right?

8 A Well it's sent to the Pennsylvania Department of Banking,
9 but --

10 Q Well he's copying Bill Lenny, so --

11 A Right. Yeah. Let me just read it.

12 (Pause)

13 A He's explaining the sources of cash, as far as I can tell
14 from this.

15 Q Right. He's telling you where the cash is going to come
16 from.

17 A Right.

18 Q And that's Mr. Preve telling you that, right?

19 A Right.

20 Q And then attached to that is another two pages.

21 MR. EGAN: And if we could go to the next one.

22 BY MR. EGAN:

23 Q He sends you a TD Bank statement, right? See that?

24 A Okay.

25 Q And it shows a number of accounts with available

Gaunt - Cross/She

142

1 balances, correct?

2 A It looks that way, yeah.

3 Q And one of those accounts has an available balance of
4 \$329 million, does it not?

5 A Yes. Trust number three, it says.

6 Q And the others are pretty big too, huh?

7 A Yeah.

8 MR. EGAN: May I have a moment, Your Honor?

9 THE COURT: Yes, sir.

10 (Pause)

11 MR. EGAN: No further questions.

12 CROSS-EXAMINATION

13 BY MS. SHEALY:

14 Q Good afternoon, Mr. Lenny (sic), I'm Allison Shealy. I
15 think that the gist of your earlier testimony is that you're
16 being asked about things that happened in 2009, right?

17 A (No verbal response)

18 Q I'm sorry, you have to answer verbally yes or no.

19 A Yes.

20 Q Thank you. And we're in 2016 now, so that was a long
21 time ago, right?

22 A About six years ago, yes.

23 Q Six years ago. And 2009 at the Federal Reserve was a
24 very busy time, wasn't it?

25 A Reasonably busy, yeah. It's always busy.

1 Q A lot going on in the economy, a lot of things effecting
2 the Federal Reserve?

3 A A little more in 2008, but it was busy, sure.

4 Q It was busy.

5 A Particularly with the TARP side of things, things were
6 busy.

7 Q Okay. And you were copied, we've seen a number of emails
8 and you were copied on those emails, essentially because you
9 were the guy in charge of a pretty large group within the
10 Federal Reserve, right?

11 A Yeah. Well about eight or nine people, yeah.

12 Q Eight or nine people who had responsibility for a lot of
13 different areas, is that fair to say?

14 A Well they were -- there were two areas, but on the
15 application side of things, there were analysts. The analysts
16 would be assigned a case, they would work it, and then it
17 would work its way up to the manager, and there would be a
18 process -- there would be discussion all along, and then a
19 decision would be made on the application.

20 Q But I believe your testimony was that, although you were
21 copied on some of the emails, you don't really have a specific
22 recollection of the information that is included in those
23 emails, is that fair to say?

24 A I guess it's fair to say, yeah.

25 Q Okay. And a few seconds ago, Mr. Egan asked you

1 questions about whether or not the change in control
2 application for Mr. Levin was triggered when he got to 10
3 percent or more as an investor. Do you remember being asked
4 those questions?

5 A Yeah.

6 Q And you said it's very, very technical. Was that your
7 testimony?

8 A Yes.

9 Q And that it requires a legal conclusion as to when those
10 types of applications actually have to be filed, is that
11 right?

12 MS. BARRY: Objection.

13 THE COURT: Just a moment, please. Let me hear your
14 basis, please -- her basis for the objection. Counsel, do you
15 wish to -- you can come up -- you can approach, either way.

16 MS. BARRY: Well just that she's requesting for him
17 to give a legal conclusion.

18 THE COURT: You can rephrase.

19 BY MS. SHEALY:

20 Q Was it your testimony earlier today, sir, that it would
21 require a legal conclusion as to whether or not a change in
22 control application was required for a 10 percent or more
23 investor at Nova Financial Holdings?

24 A Well I might have said that. Another word would have
25 been a technical analysis done. The reason I said that is the

1 regulation is -- is rather long, and you have to, if you're
2 investing with your wife, or you're investing with your
3 brother-in-law, that could be included.

4 So the way you look at this is, you have to sort of
5 gather a lot of facts.

6 Q It's complicated, is that fair to say?

7 A I thought it was.

8 Q You thought it was. I'm sorry, how many years were you
9 at the Federal Reserve?

10 A Twelve.

11 Q Twelve. And before that, you had experience in banking
12 as well?

13 A I have been in banking, yes.

14 Q Yes. It's complicated. Is there some other form for
15 realizing it may not exactly be 10 percent, but for investors
16 who are really small in a bank, like a one percent investor in
17 a bank, is there any form that requires disclosure by those
18 types of investors as to the source of their funds in
19 investment -- and I said bank, but I actually mean an
20 investment in a bank holding company.

21 A I can't think of one.

22 Q So it's only once the investor reaches that threshold
23 where they become a change in control type investor, that they
24 have to put on the form the source of the funds that they
25 intend to put into the bank holding company, is that correct?

Gaunt - Redirect/Bar

146

1 A That sounds right.

2 Q Okay. A couple of more questions. And that is, my
3 client is Mr. Barry Bekkedam the tall gentleman in the blue
4 tie over there. Do you see him?

5 A Um-hum.

6 Q Have you ever met Mr. Bekkedam before?

7 A I don't believe so.

8 Q The documents, and realizing your recollection is not the
9 greatest, but do you recall at all ever seeing his name come
10 up in any of the materials that came to you?

11 A I don't have a recollection if that was the case.

12 Q Okay.

13 MS. SHEALY: No further questions. Thank you, sir.

14 REDIRECT EXAMINATION

15 BY MS. BARRY:

16 Q Mr. Gaunt, Government's Exhibit 89.

17 A Okay.

18 Q I'd like to try to get you a hard copy --

19 A I have it.

20 Q Oh, you have it. Okay.

21 A No, I'm sorry, I have 82.

22 (Pause)

23 MS. BARRY: May I approach, Your Honor? I'll show
24 him my copy.

25 THE COURT: Yes.

1 MS. BARRY: Government's Exhibit 89.

2 BY MS. BARRY:

3 Q I'm showing you Government's Exhibit 89.

4 A Okay.

5 Q And what is the first page of this -- of Government's
6 Exhibit 89? What is the first page, sir?

7 A First page is --

8 Q Do you know if it's an email --

9 A -- just a cover email, it looks like. Yeah.

10 Q Okay. And is information being forwarded to several
11 individuals, or not?

12 A Yes.

13 Q Okay. Are you one of those individuals?

14 A I am. Yeah.

15 Q Okay. And -- and attached to this email, are there a
16 number of documents --

17 A Yes, there are.

18 Q -- including a revised interagency biographical and
19 financial report?

20 A Yes.

21 Q Okay. And is the interagency biographical and financial
22 report part of the information that is provided along with the
23 CIC application?

24 A Yes.

25 Q Okay.

1 MS. BARRY: Your Honor, the Government moves for the
2 admission of Government's 89.

3 MR. EGAN: No objection.

4 THE COURT: Admitted.

5 MS. BARRY: If we could please take a look -- and if
6 it may be published, Your Honor, I believe it's Government's
7 Exhibit --

8 THE COURT: Granted.

9 MS. BARRY: -- 64. Page six, I believe.

10 BY MS. BARRY:

11 Q Now here it says, again, looking at item seven.

12 A Um-hum.

13 Q In the change in control application, the source and
14 amount of funds. What does it say there?

15 A "One-half from personal finances, one-half from borrowed
16 funds."

17 Q And if we look at Subsection B for -- of that. "If any
18 of the portion of the funds for the acquisition will be
19 borrowed --"

20 Does it -- what does it say, indicate what?

21 A Well name and address for each borrower, name and address
22 of each lender, amount financed, collateral to pledged, terms
23 of the transaction including interest rates, amortization
24 requirements, guarantors, endorsers, co-makers, and any other
25 arrangements, agreements and understandings between and among

1 the parties.

2 So we want everything.

3 Q Okay. Thank you.

4 MS. BARRY: No more questions.

5 MR. EGAN: No recross.

6 MS. SHEALY: No further questions.

7 THE COURT: Thank you, sir, you may step down.

8 Watch your step, please.

9 THE WITNESS: Thank you, Your Honor.

10 (Pause)

11 MS. BARRY: The United States calls Joseph Moretz.

12 And may I approach the witness stand to --

13 THE COURT: Certainly.

14 MR. IGNALL: Your Honor, could we perhaps take a
15 one-minute stretch break. I understand from Agent Lyon he
16 might need that to locate -- I think the witness has taken a
17 stretch break himself.

18 THE COURT: Let's take ten minutes, if you don't
19 mind. But don't look at the parade.

20 (Jury Exits)

21 (Court in recess 2:47 p.m. to 2:58 p.m.)

22 THE CLERK: All rise.

23 (Jury Enters)

24 THE CLERK: Ladies and gentlemen, we are back on the
25 record.

Moretz - Direct/Bar

150

1 THE COURT: You may be seated. Thank you.

2 MS. BARRY: Your Honor, the United States calls
3 Joseph Moretz.

4 THE CLERK: Please remain standing. Raise your
5 right hand.

6 JOSEPH MORETZ, GOVERNMENT WITNESS, SWORN

7 THE CLERK: Please state and spell your name for the
8 record.

9 THE WITNESS: Joseph Moretz. It's J-O-S-E-P-H
10 M-O-R-E-T-A.

11 MS. BARRY: May I inquire, Your Honor?

12 THE COURT: You may proceed.

13 MS. BARRY: Thank you.

14 DIRECT EXAMINATION

15 BY MS. BARRY:

16 Q Good afternoon, Mr. Moretz.

17 A Good afternoon.

18 Q Where do you work?

19 A I work with the Pennsylvania Department of Banking and
20 Securities.

21 Q And how long have you been with the Pennsylvania
22 Department of Banking and Securities?

23 A Slightly over 29 years.

24 Q And in 2009 what was your position with -- and is that
25 sometimes referred to PADOB, or PADOBS? The Pennsylvania

1 Department of Banking and Securities?

2 A Yeah, it is -- it was Pennsylvania Department of Banking
3 previously.

4 Q And in 2009 was it the Pennsylvania Department of
5 Banking?

6 A It was.

7 Q Okay. And what was your position, sir, in 2009?

8 A I was manager of corporate applications.

9 Q Okay. And are some of the applications for change in
10 control -- or some of those applications for a change in
11 control that you -- you supervised?

12 A Yes.

13 Q Okay.

14 A Those would be Section 112, is what we call it.

15 Q Okay. And so the change in control application, is that
16 a -- the formal term for the Federal -- what the Federal
17 Reserve uses in -- for a Section 112 application?

18 A Yeah. They're substantially equivalent.

19 Q Okay. So in PADOB language, a change in control would be
20 a 112 application is that -- or not?

21 A Yes.

22 Q Okay. And what -- what is a change in control, or
23 Section 112 application?

24 A That's when an applicant proposes to acquire 10 percent
25 or more of an existing State bank.

Moretz - Direct/Bar

152

1 Q Okay. And why is there -- why does there need to be
2 regulatory approval for someone to own more than ten percent?

3 A The ten percent threshold is considered to be a control
4 threshold, so the idea is to try to limit, or I should say
5 restrict or -- those who hold more than ten percent or more of
6 a bank's stock.

7 Q Okay. And does PADOB work with other regulators?

8 A Yes.

9 Q And what are the other regulators?

10 A Federal Reserve -- well Federal Reserve in general, but
11 Philadelphia is mostly who we work with. And the FDIC.

12 Q And so is there communication among the agencies?

13 A Yes.

14 Q Now were you aware of an institution called Nova Bank in
15 2009?

16 A Yes.

17 Q And do you know whether or not Nova Bank had a parent
18 holding company?

19 A They did.

20 Q And what was that called?

21 A I believe Nova Holdings, Inc.

22 Q Okay.

23 A I think. I'm not sure if that's exactly right.

24 Q And do you know whether the holding company -- let me --
25 strike that.

Moretz - Direct/Bar

153

1 Do you know at any point in time in 2009 whether
2 there was going to be a change in control -- if a Section 112
3 application was filed for Nova Financial Holdings?

4 A There was, yes.

5 Q And I'd like to show you what's been marked as
6 Government's Exhibit 63.

7 MS. BARRY: And I believe that has been moved into
8 evidence, Your Honor.

9 THE COURT: All right.

10 MS. BARRY: If it may be published?

11 THE COURT: Yes.

12 BY MS. BARRY:

13 Q And, Mr. Moretz, at any time, if you prefer a hard copy
14 of the exhibit, you can let me know that.

15 A Okay.

16 Q So looking at Government's Exhibit 63, what is the date
17 of this letter?

18 A July 21st, 2009.

19 Q And the letterhead says what institution is sending this?

20 A You mean the reference?

21 Q No, the letterhead.

22 A Oh, Nova, I'm sorry. Yeah. I'm sorry.

23 Q Okay. Nova Financial Holdings?

24 A Yes.

25 Q Okay. And if you would, please, read the first -- first

Moretz - Direct/Bar

154

1 few sentences of the first paragraph?

2 A (Reading)

3 "Please be advised that on June 30th, 2009 Mr. Levin
4 invested \$5 million of his proposed 18 million investment in
5 Nova Financial Holdings, Inc. His current percentage of
6 investment is 8.24. The additional 13 million investment will
7 put Mr. Levin's percentage at approximately 24.4, which
8 requires approval of the Federal Reserve and the Pennsylvania
9 Department of Banking."

10 Q Okay. And so what was the investment that Mr. Levin was
11 making?

12 A Total 18 million.

13 Q Okay. And what percentage then would he acquire of the
14 -- of ownership in Nova Financial Holdings?

15 A 24.4.

16 Q Okay.

17 MS. BARRY: And if we could, please, turn to page
18 five of 16?

19 BY MS. BARRY:

20 Q And looking at page five of 16 -- I'm sorry, page five of
21 Government's Exhibit 63, what is this?

22 A That's the application questionnaire we give for
23 individuals investing -- filing a 112 application.

24 Q Okay. So are these the questions that need to be
25 answered for the Section 112 application, or not?

1 A Yes.

2 Q Okay. And in looking at question D, can you read that
3 please, sir?

4 A (Reading)

5 "Source and amount of funds or other consideration.
6 State the source and amount of funds or other consideration
7 used or to be used in the making the purchases, and if any
8 part of the purchase price or proposed purchase price is
9 represented by funds or other consideration, borrowed or other
10 obtained for the purpose of acquiring, owning or trading the
11 shares, give a description of the transaction and the names of
12 the parties thereto."

13 Q Okay. And so looking at that, again, it says funds used
14 or to be used, correct?

15 A Yes.

16 Q Okay. And in response to question D of the Section 112
17 application, if we take a look now at page four of the -- of
18 Government's Exhibit 63, what is the response to question D?

19 A (Reading)

20 "It's the applicant's intention to pay the
21 approximately 18 million purchase price with funds currently
22 on deposit in various financial institutions. However, a
23 portion of the purchase price may come from other sources."

24 Q Okay. Now this particular response to question D, do you
25 know whether or not the Pennsylvania Department of Banking had

Moretz - Direct/Bar

156

1 follow up questions related to the response to question D?

2 A Yes, we did.

3 Q And I'd like you now to take a look at Government's
4 Exhibit --

5 THE COURT: Counsel, excuse me one second.

6 MS. BARRY: Yes.

7 THE COURT: Thank you very much.

8 (Pause)

9 THE COURT: I didn't want to take a chance, that was
10 really unstable. Let's take a recess, please.

11 (Pause)

12 THE COURT: You can move down.

13 (Pause)

14 THE COURT: All right. We're -- well wait until it
15 comes back -- Carl comes back for that machine.

16 (Pause)

17 THE COURT: I think we're going to be okay. Thank
18 you.

19 MS. BARRY: May Mr. Moretz be seated again?

20 THE COURT: Yes, sir, you may be seated. You may
21 continue. Thank you.

22 MS. BARRY: Thank you, Your Honor.

23 BY MS. BARRY:

24 Q If we could take a look --

25 MS. BARRY: And I believe Government's Exhibit 74

Moretz - Direct/Bar

157

1 has been moved into evidence. And if we could please just
2 take a look at the bottom email. If we blow that up? And may
3 we publish this, Your Honor?

4 THE COURT: Yes.

5 BY MS. BARRY:

6 Q Looking at Government's Exhibit 74, who's Donna Metcalfe?

7 A Donna Metcalfe was an administrator that worked with me
8 at that time.

9 Q Okay. And what is the date of this email?

10 A August 17th, 2009.

11 Q Okay. And who is the -- is she sending the email to?

12 A Kim Hartline.

13 Q Okay. And are you copied on this email?

14 A Yes.

15 Q And looking at the additional information with regard to
16 Mr. Levin, item number two, do you know whether or not that
17 was a follow up to the response that was provided to question
18 D of application -- of this 112 application?

19 A Yes, it was.

20 Q Okay. And so what does -- and if you can read it, what
21 is Ms. Metcalfe asking? What additional information is she
22 asking for from Kim Hartline?

23 A (Reading)

24 "The source of funds to be used to purchase this
25 stock. If cash funds are used, provide copies of account

Moretz - Direct/Bar

158

1 statements. If assets are to be liquidated, list those assets
2 and provide a copy of the documents that can verify the timing
3 of the transaction. If any portion is borrowed, provide the
4 name of each borrower, name and address of each lender, amount
5 financed, collateral to be pledged in terms of the
6 transaction, including interest rate --"

7 It should say rates.

8 "-- amortization, guarantors, co-makers, and any
9 other arrangements among the parties"

10 Q And do you know whether or not a subsequent response was
11 provided to PADOB from the requests Ms. Metcalfe made on
12 August 17th, 2009?

13 A Yes, there was.

14 Q Okay. And I'd like you to take, please, a look at what's
15 been marked as Government's Exhibit 82, which I believe has
16 been moved into evidence.

17 In looking at Government's Exhibit 82, is this first
18 page an email containing -- I'm sorry, is Government's Exhibit
19 82 an email with attachments to it? And I can give you a hard
20 copy, if that makes it easier.

21 A I believe it is, yes.

22 Q Okay.

23 A Yes.

24 MS. BARRY: And if we could publish that, please?

25 THE COURT: Yes.

1 BY MS. BARRY:

2 Q And so this is -- who is this email from?

3 A Kim Hartline.

4 Q And what is the date of the email?

5 A September 8th, 2009.

6 Q Okay. And are you one of the recipients of this email?

7 A Yes.

8 Q Okay. And looking at the first sentence, she writes:

9 "Gentlemen, please see information that was provided
10 to us this evening from Mr. Preve. He asks that I forward it
11 to both agencies. Can you please forward the information to
12 Donna Metcalfe and Mr. Lenny?"

13 And so are you the person she's asking to forward to
14 Donna Metcalfe, is that your understanding?

15 A Yes.

16 Q And could you please read the second paragraph?

17 A (Reading)

18 "Please be advised that Nova has received formal
19 approval of our CPP application from the U.S. Treasury for a
20 minimum of 13.5 million, contingent upon our raising a minimum
21 of 10 million of common equity. Nova is currently working on
22 a tentative schedule to close a capital investment of 13
23 million from Mr. Levin by September 24th, provided he receives
24 regulatory approvals, and close on our CPP funding on
25 September 25th, the last Friday of September."

Moretz - Direct/Bar

160

1 Q Okay. And what is your understanding of the information
2 she's giving to you here?

3 A That the institution has, you know, been approved for
4 what we call a TARP funding, CCP application from the U.S.
5 Treasury.

6 Q Okay. And when she writes "The tentative schedule to
7 close a capital investment of 13 million from Mr. Levin by
8 September 24th, provided he receives regulatory approvals,"
9 what was your understanding of that?

10 A That they -- their desire was to close that transaction
11 September 24th.

12 Q Okay. Do you know -- in order for him to make that
13 transaction that they want, the investment, did he need to
14 have his Section 112 application approved?

15 A Yes.

16 Q Okay.

17 MS. BARRY: If we can take a look at the second
18 page?

19 BY MS. BARRY:

20 Q Okay. And is this a letter to you?

21 A Yes.

22 Q Okay. And can you please read the first paragraph?

23 A (Reading)

24 "In connection with the pending application, Mr.
25 Levin has provided a printout of the trust account statements

Moretz - Direct/Bar

161

1 from TD Bank, which documents in excess of 630 million of
2 available funds for his proposed investment in Nova Financial
3 Holdings, Inc. Mr. Preve has also provided a brief funding
4 explanation memo. I am forwarding these documents to you
5 herein."

6 Q Okay. And does it then say:

7 "In accordance with the request received from Donna
8 Metcalfe."

9 And then:

10 "Other information is also being provided."

11 A Yes.

12 Q Okay. And who is this letter from?

13 A Kim Hartline.

14 Q Okay. Who was your main point of contact at Nova? Who
15 did you mostly speak with, if anyone?

16 A Kim Hartline.

17 Q Okay.

18 MS. BARRY: If we take a look at the third page.

19 BY MS. BARRY:

20 Q And who is this letter to?

21 A Donna Metcalfe.

22 Q Okay. And looking at the first sentence, what does that
23 say?

24 A (Reading)

25 "Reference your email dated August 17th, 2009

Moretz - Direct/Bar

162

1 requesting that we identify the sourcing of funds for the
2 Levine investment in Nova Financial Holdings, Inc."

3 Q Okay. And so is this a response from the email Ms.
4 Metcalfe had previously sent on August 17th, 2009 to Kim
5 Hartline?

6 A Yes.

7 Q Okay. And in looking at the explanation for the source
8 of funding, does it indicate there that any portion of Mr.
9 Levin's \$18 million investment was from money borrowed from
10 Nova Bank?

11 MR. EGAN: Objection.

12 THE COURT: Overruled.

13 MR. EGAN: There's nothing on this letter about \$18
14 million, Your Honor.

15 THE COURT: I'm sorry?

16 MR. EGAN: There's nothing in this letter about \$18
17 million.

18 THE COURT: Counsel, your question again was?

19 MS. BARRY: Is there anything in this letter
20 regarding the \$18 million investment from Mr. Levin that
21 indicates the source of funding, any portion of it came from
22 monies borrowed from Nova Bank?

23 THE COURT: The objection's sustained.

24 BY MS. BARRY:

25 Q Okay. Ms. Metcalfe's email of August 17th, 2009, what

Moretz - Direct/Bar

163

1 did it request in item number two? And we can go back to
2 that, if we need to, which is Government's Exhibit 74.

3 A Yeah, maybe we should.

4 MS. BARRY: Thank you for doing the side-by-side
5 here.

6 BY MS. BARRY:

7 Q Okay. Looking at Government's Exhibit 74 on the right,
8 what is item number two requesting?

9 A Well it's a source of funds, and specifically if any of
10 that -- the source of funds are from borrowed money.

11 Q And, again, is this a follow up to question D from the
12 Section 112 application regarding the \$18 million investment
13 from Mr. Levin?

14 A Yes.

15 Q Okay. And in response -- in the response that was
16 forwarded to PADOB by Kim Hartline, this letter from Mr.
17 Preve, does it indicate in that letter --

18 MS. BARRY: If we could put it back up? Just the
19 letter is okay.

20 BY MS. BARRY:

21 Q Does it indicate in that letter whether any of the funds
22 for the \$18 million investment was borrowed from Nova Bank?

23 A No.

24 Q Why was the source of funding important to the
25 Pennsylvania Department of Banking?

Moretz - Direct/Bar

164

1 A Well the reason we look at the source of funds, we want
2 to determine that the individual investing has the financial
3 ability to make the investment without causing undue stress to
4 him financially.

5 Q Okay. And is there -- is the source of funding, is that
6 important to know to protect the safety and soundness of the
7 bank?

8 MR. EGAN: Objection.

9 THE COURT: Sustained.

10 BY MS. BARRY:

11 Q What other reasons is the source of funding important?

12 A Well we want to -- like I said, we want to make sure that
13 there was not going to be any financial strain, so we don't
14 want this person to be dependent on dividends, or a sale of
15 the bank, or some other -- or doing something to the bank that
16 would be detrimental to the bank.

17 Q All right. Did the Pennsylvania Department of Banking
18 approve Mr. Levin's proposed acquisition of up to 24.9 percent
19 of common stock in Nova Financial Holdings?

20 A Yes. 24.99, I think.

21 Q And I'd like to show you what's been marked as
22 Government's Exhibit 100A.

23 MS. BARRY: Just for the witness, please. Thanks.

24 BY MS. BARRY:

25 Q And have you seen this letter before?

Moretz - Direct/Bar

165

1 A Yes.

2 Q Okay. And are you referenced in this letter?

3 A Yes, I believe I am at the bottom.

4 MS. BARRY: Your Honor, the Government moves for the
5 admission of Government's Exhibit 100A.

6 MR. EGAN: No objection.

7 MR. DUNCAN: No objection.

8 THE COURT: Admitted.

9 MS. BARRY: And may it be published?

10 THE COURT: Yes.

11 BY MS. BARRY:

12 Q In looking at Government's Exhibit 100A, what is this?

13 A That's a conditional approval letter for the Section 112
14 application filed by George Levin to buy 24.99 percent of the
15 common stock of Nova Financial Holdings, Inc.

16 Q Okay. And the 24.99 percent is that -- does that reflect
17 the \$18 million investment?

18 A It's -- it's -- the 18 million may be slightly more.

19 Q Okay.

20 MS. BARRY: May I have a moment, Your Honor?

21 THE COURT: Yes, ma'am.

22 (Pause)

23 BY MS. BARRY:

24 Q If we could just stay with Government's Exhibit 100A for
25 a moment. If we go to the second page, please? Whose copied

Moretz - Cross/Ega

166

1 on this letter?

2 A William Gaunt, Assistant Vice-President Federal Reserve
3 Bank, and Cheryl Kim Hartline, Corporate Secretary, Nova
4 Financial Holdings, Inc.

5 Q Okay. And as of the date of this letter, October 19th,
6 2009, were you aware that any portion of Mr. Levin's \$18
7 million investment in Nova Financial Holdings was money that
8 was borrowed from Nova Bank?

9 A I was not aware of that.

10 MS. BARRY: No further questions, Your Honor. Thank
11 you.

12 MR. EGAN: May I inquire?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. EGAN:

16 Q Good afternoon, sir.

17 A Good afternoon.

18 Q You're with the Pennsylvania Department of Banking,
19 right?

20 A Well it's the banking and securities now, but, yes.

21 Q And we're mostly talking about 2009 here, unfortunately.

22 A Correct.

23 Q It was the Pennsylvania Department of Banking then,
24 right?

25 A It was.

1 Q And that is one of the entities that regulated Nova Bank,
2 correct?

3 A Yes.

4 Q And along with the FDIC?

5 A FDIC, yes.

6 Q And the Federal Reserve Board, they regulated Nova
7 Financial Holdings, correct?

8 A Yes.

9 Q Now in order to have a change of control approved, there
10 had to be an application with both your institution, the
11 Pennsylvania Department of Banking, and the Federal Reserve
12 Board, correct?

13 A Yes.

14 Q So essentially, the application had to be filed in two
15 places?

16 A Yes. We have essentially the same application.

17 Q Not quite -- not identical, but pretty close?

18 A Yes.

19 Q Which means that two different institu - two different
20 regulators, for lack of a better way of putting it, would now
21 be investigating Mr. Levin to see if he was appropriate to
22 become a change in control investor, correct?

23 A Yes.

24 Q And this investigation is not about the bank. Right?

25 A Well the investigation's --

Moretz - Cross/Ega

168

1 Q It's of Mr. Levin.

2 A Yes.

3 Q And the application is not the bank's application,
4 correct?

5 A It's not.

6 Q It's Mr. Levin's application?

7 A Yes.

8 Q He signs it?

9 A Um-hum.

10 Q His personal information is provided?

11 A Yes.

12 Q And your -- your group, the Pennsylvania Department of
13 Banking, has direct contact with the applicant to find out the
14 answers to your questions, correct?

15 A We -- I don't know how much direct contact we had with
16 Mr. Levin, he worked mostly through others.

17 Q Right. Mr. Preve?

18 A Like Mr. Preve and Ms. Hartline.

19 Q And you spoke to Mr. Preve, correct?

20 A I did not.

21 Q But you know other people in your department spoke to
22 him?

23 A I would presume that they did.

24 Q And, obviously, they're going to ask him any follow up
25 questions that they have, correct?

Moretz - Cross/Ega

169

1 A Yes. We'll follow up.

2 MR. EGAN: And if we could go to the application
3 itself, which is Government's 63. And take a look at the
4 cover letter. Thanks.

5 BY MR. EGAN:

6 Q Now I believe you said on direct examination that a
7 change in control application is not necessary until you get
8 to 10 percent of an interest, correct?

9 A Yes. In most cases.

10 Q Right. And in this case, that was the way it was?

11 A I think so, yes.

12 Q So there wasn't any need to file an application until he
13 reached over 10 percent, correct?

14 A That's right.

15 Q And at the time the application was filed, he had already
16 invested \$5 million, correct?

17 A Yes. Well that's what we were -- that's what was told to
18 us.

19 Q Right. And so, he was investing an additional \$13
20 million, which required your approval?

21 A Yes.

22 Q Now at page four of this document, is the answer to the
23 question about the source of the funds right?

24 A Yes.

25 Q And this is a document that's signed by Mr. Levin,

Moretz - Cross/Ega

170

1 correct?

2 A Yes.

3 Q And it's --if we go up to the top, it's on his
4 letterhead, correct?

5 A Yes.

6 Q So it's Mr. Levin answering your questions, correct?

7 A Yes.

8 Q And he says:

9 "It is the applicant --"

10 That's him, right? The applicant, that's George
11 Levin?

12 A Yeah.

13 Q (Reading)

14 "It is the applicant's intention to pay the
15 approximately \$18 million purchase price with funds currently
16 on deposit in various financial institutions. However, a
17 portion of the purchase price may come from other sources."

18 Correct?

19 A Yes.

20 Q Now that wasn't enough detail to be satisfactory to your
21 department, correct?

22 A That's right.

23 Q So of course you're going to follow up and ask more
24 questions, right?

25 A Yes.

Moretz - Cross/Ega

171

1 Q And, indeed, if we could go to Government's 74, which you
2 just looked at. Now the bottom of that is an email from Donna
3 Metcalfe to Ms. Hartline, correct?

4 A Yes.

5 Q And it asks two questions of her.

6 A Yes.

7 Q And those questions are, number one, about this classic
8 car motor carriage, which we're not going to get into.

9 And number two about the source of the funds.

10 A Yes.

11 Q Now you would agree with me that that sentence number
12 two, the very first sentence there says:

13 "The source of the funds to be used to purchase the
14 stock."

15 Correct?

16 A Yes.

17 Q And this was sent on August 17th, 2009, correct?

18 A Yes.

19 Q And at that time \$5 million of stock had already been
20 purchased, correct?

21 A That's what we were told, yes.

22 Q Yes. And 13 million was still to be purchased, correct?

23 A Yes.

24 Q Now Ms. Hartline doesn't answer that question, does she?

25 A I'm sorry?

Moretz - Cross/Ega

172

1 Q Ms. Hartline doesn't answer that question, does she?

2 A No. I don't think she does, no.

3 MR. EGAN: If we could have Government's 73, please,
4 which is already admitted. If we could go to page two.

5 BY MR. EGAN:

6 Q See that email? That's an email that we just looked at,
7 right? Same one.

8 A Yes.

9 Q And it has Ms. Metcalfe's phone number on it, right?

10 A Yep.

11 Q So basically saying, hey, call -- anybody can call me and
12 give the answers to this would be helpful, right?

13 A Yeah, I think she's just trying to make herself
14 available.

15 Q Of course. Now if we could go to the page before the
16 bottom email. That's Kim Hartline to F. Preve. That's Frank
17 Preve, right?

18 A Yeah, I don't know him, but yes.

19 Q And it says:

20 "Frank, here is the formal request from the PA
21 Department of Banking for information, please contact Ms.
22 Metcalfe if you have any questions."

23 Correct?

24 A Yes.

25 Q So she's telling Mr. Preve, hey you need to answer these

Moretz - Cross/Ega

173

1 questions, call up Ms. Metcalfe.

2 MS. BARRY: Objection.

3 THE COURT: Sustained.

4 MR. EGAN: Now if we could go to Government's 82,
5 please?

6 BY MR. EGAN:

7 Q And this is an email from Ms. Hartline to yourself,
8 correct?

9 A Yes.

10 Q It copies Mr. Preve?

11 A Um-hum. Yep.

12 Q And Mr. Gaunt from the Federal Reserve, right?

13 A Right. Well it's two --

14 Q Right. And it says:

15 "Gentlemen, please see the information that was
16 provided to us this evening from Mr. Preve."

17 Correct?

18 A Yes.

19 Q And in the second paragraph it says:

20 "Nova is currently working under a tentative
21 schedule to close a capital investment of \$13 million from Mr.
22 Levin."

23 Correct?

24 A Yes.

25 Q And then at page three --

Moretz - Cross/Ega

174

1 MR. EGAN: If we can have that?

2 BY MR. EGAN:

3 Q -- that's the letter you were shown from Mr. Levin,
4 correct?

5 A Yes.

6 Q Now it never says anything in this letter about \$18
7 million, does it?

8 A No specific mention of the amount.

9 Q No. It's attached in an email that talks about \$13
10 million, though, doesn't it?

11 A Is that the previous?

12 Q Yeah, the one we just looked at.

13 A I think so. I mean, I'd have to see it again.

14 Q Well if you want, we can go back to page one.

15 MR. EGAN: You're going in the wrong direction
16 there, Sean.

17 BY MR. EGAN:

18 Q See that, 13 million down in the second paragraph?

19 A Yes.

20 Q All right. This came with that, right?

21 A Yes.

22 Q And --

23 MR. EGAN: And now if we can go back to three.

24 BY MR. EGAN:

25 Q This letter telling you where the money's coming from,

Moretz - Cross/Ega

175

1 it's on George Levin's letterhead, right?

2 A Yes.

3 Q It's signed by Frank Preve, right?

4 A Yes.

5 Q And that would be what you would expect, because Levin's
6 the applicant, correct?

7 A Levin is the applicant. Yes.

8 Q He's the guy you're asking for the information?

9 A Um-hum. Yes.

10 Q Now I believe you were asked if you approved this
11 application, correct?

12 A Yes. I was asked that.

13 Q And you did approve the application?

14 A We did.

15 Q And in approving the application, you looked at a lot of
16 other things besides the source of the funds, didn't you?

17 A We looked at the entire application.

18 Q Yes. You looked at Mr. Levin's financial statements?

19 A Yes.

20 Q Saw that he was worth \$400 million, give or take?

21 A Yeah. That's --

22 Q That probably had some impact on your decision, I
23 imagine?

24 A Financial wherewithal is very important.

25 Q Right. Which is also the reason why -- the main reason

Moretz - Cross/She

176

1 why you ask for the source of the funds, right?

2 A Yeah, we wanted to where the money was coming from.

3 Q And you want to make sure the guy has the money to -- or
4 person has the money to invest, right?

5 A Yes.

6 Q That's the main point.

7 A The main issue is -- yeah, that he has the ability.

8 Q Okay.

9 MR. EGAN: I have no further questions, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. SHEALY:

12 Q Hi, Mr. Moretz. I'm Allison Shealy.

13 A Hello.

14 Q I have a question about your earlier testimony. I want
15 to make sure that I understand it correctly. And that is that
16 the -- I'm sorry, the Section 112 application, that's the
17 Pennsylvania Department of Banking and Securities version of a
18 change in control application, correct?

19 A It's similar.

20 Q Very similar. And that the threshold at which one has to
21 file that type of application, that's at ten percent, is that
22 accurate?

23 A Yeah, ten percent is the general rule.

24 Q And there's no other form for the Pennsylvania Department
25 of Banking that requires disclosure as to an investor's source

Moretz - Cross/She

177

1 of funds if that investor is less than ten percent, is that
2 accurate?

3 A Yeah, we don't -- under ten percent we generally do not.

4 Q Because you're focused on the ten percent or more
5 investors, because you want to make sure that they're not
6 going to put any type of undue influence on the bank, is that
7 correct?

8 A Right. Any financial stress of any type.

9 Q Okay.

10 MS. SHEALY: If we could pull up Government Exhibit
11 63, which was previously admitted?

12 BY MS. SHEALY:

13 Q Do you have it on your screen now?

14 A I do.

15 Q The cover letter identifies the various information that
16 was provided to you as part of Mr. Levin's Section 112
17 application, correct?

18 A Yes.

19 Q And did you in fact receive all of the information
20 identified in those bullet points?

21 A I would presume that we did.

22 Q In particular, it says two copies of the interagency
23 biographical and financial report, and interagency change in
24 control with a copy of Mr. Levin's personal financial
25 statements which were filed with the Federal Reserve Bank.

Moretz - Cross/She

178

1 Did you receive those materials?

2 A I believe that we did.

3 Q Okay. And do you have a copy of Exhibit 63 there in
4 front of you?

5 A Um -- I don't have a physical copy, but I have what he
6 has up on the screen.

7 MS. SHEALY: Your Honor, may I approach?

8 THE COURT: Sure.

9 THE WITNESS: Thank you.

10 BY MS. SHEALY:

11 Q Can you just flip through that document?

12 MS. SHEALY: And, actually, may I approach, Your
13 Honor, with a second document as well?

14 THE COURT: Yes.

15 BY MS. SHEALY:

16 Q So, Mr. Moretz, I just handed you two documents, one
17 which is marked Government Exhibit 63, and another which has
18 been marked as Government Exhibit 64.

19 A Yep.

20 Q Do you see those two?

21 A I do.

22 Q And would you agree that perhaps with the exception of
23 the cover letter attached to Government Exhibit 64, that the
24 information behind that cover letter includes interagency
25 notice of change in control, and interagency biographical and

Moretz - Cross/She

179

1 financial report that was submitted to the Federal Reserve?

2 A Yes.

3 Q And that information, even though it is not attached to
4 the application we have as Government Exhibit 63, was
5 information that was provided to you for your consideration in
6 Mr. Levin's Section 112 application?

7 A Yes. I think we did.

8 Q Okay. So the -- in both of those documents, Exhibit 63
9 and Exhibit 64, the information that is provided and signed by
10 Mr. Levin, it's all dated on June 30th, 2009, is that correct?

11 A (No verbal response)

12 Q Let me rephrase that. The signature pages for those
13 documents by Mr. Levin, they were dated as of June 30th, 2009,
14 correct?

15 A This one is. Yes.

16 Q Okay. So the information that is being provided in the
17 underlying applications by Mr. Levin, he's representing that
18 that information is accurate as of June 30th, 2009, correct?

19 A Yes.

20 MS. SHEALY: And if we could pull up on the screen
21 for the jury Government Exhibit 63, at page four, I believe.

22 BY MS. SHEALY:

23 Q And in response to Paragraph D, which is the request to
24 Mr. Levin as to the source of his funds, he indicates in
25 response to the Pennsylvania application in particular that

Moretz - Cross/She

180

1 the source of his approximately 18 million, which was the full
2 amount he was going to eventually invest, was going to come
3 from deposits in various financial institutions, and from
4 other sources, is that correct?

5 A Yes.

6 Q He also provided information about the source of funds in
7 the federal application, which was provided to you, didn't he?

8 A I --

9 MS. SHEALY: If we could pull up Exhibit 64, I
10 believe it's page six.

11 THE WITNESS: Okay.

12 MS. SHEALY: Government Exhibit 64. And if I could
13 direct you to the top of the page paragraph seven.

14 BY MS. SHEALY:

15 Q Do you see there where it indicates that Mr. Levin, the
16 source and the amount of funds that he's going to provide,
17 half of the funds from personal finances and half from
18 borrowed funds?

19 A I do.

20 Q And that's as of June 30th, the date that Mr. Levin signs
21 the application, correct?

22 A Yes.

23 Q But the cover letter transmitting the application, you
24 didn't actually get the application until mid-July, is that
25 right?

Moretz - Cross/She

181

1 A Yes. July 21st.

2 Q And so as of July 21st that cover letter lets you know
3 that, hey, Mr. Levin has put 5 million into the bank, right?

4 MS. BARRY: Objection.

5 THE COURT: Sustained.

6 BY MS. SHEALY:

7 Q Does the cover letter indicate to you that Mr. Levin had
8 invested 5 million in Nova Financial Holdings?

9 A That's what it indicates.

10 Q That's what it indicates. And the financial statements
11 which are provided as part of the change in control
12 application, if you can flip to those. Those are dated as of
13 March 31st, 2009, is that right?

14 A Financial statements, did you say?

15 Q Yes.

16 A I think I remember that, but I'll make sure.

17 Q It should be at the back of Exhibit 64. They're rather
18 lengthy.

19 A Um-hum. March 31st.

20 Q Yes. So they're as of March 31st. So you were provided
21 information as to Mr. Levin's financial state as of March
22 31st, correct?

23 A Yes.

24 Q And then you were provided information as of June 30th as
25 to how he planned to pay for his investment in Nova Financial

Moretz - Cross/She

182

1 Holdings, correct?

2 A Yes.

3 Q And then on July -- I think it's the seventeenth, you are
4 provided the actual application. I think it's July 17th --

5 A Twenty-first.

6 Q I'm sorry, thank you. July 21st. You provided the
7 actual application with a cover letter indicating that Mr.
8 Levin has now put in 5 million into Nova Financial Holdings,
9 correct?

10 A Yep, that's what it indicates.

11 Q So at that point, it's pretty clear that the materials in
12 the application are not completely up-to-date, is that fair to
13 say?

14 A Say that again?

15 Q Ms. Barry asked you if there was anything in the
16 materials that were provided to you indicating that Mr. Levin
17 had invested -- received a loan from Nova Bank? Do you recall
18 her asking you that?

19 A Oh, yeah, sure.

20 Q And the materials -- and she -- let me rephrase. The
21 materials that were provided to you provided the information
22 from Mr. Levin were from before that time period, is that fair
23 to say?

24 A Before -- yeah, before July 21st you're saying, yes.

25 Q And so there came a time at which --

Moretz - Cross/She

183

1 A Or dated it before July 21st.

2 Q Thank you. And there came a time at which someone in
3 your agency asked questions about the source of Mr. Levin's
4 funds, is that right?

5 A Yes.

6 Q And that was Ms. Metcalfe?

7 A That was.

8 Q And I believe you described Ms. Metcalfe as an
9 administrator, is that right?

10 A That's her title -- was he title.

11 Q Was her title. Was Ms. Metcalfe the one actually
12 responsible for the analysis of the application?

13 A Yes.

14 Q And were you her supervisor?

15 A Yes.

16 Q So it was Ms. Metcalfe's responsibility --

17 MS. SHEALY: I'm sorry, you can take the exhibit
18 down.

19 BY MS. SHEALY:

20 Q -- to review the materials and the application and to ask
21 any follow up questions that she might have, is that correct?

22 A Yes.

23 Q Did you review her analysis?

24 A I reviewed it, yes. I have to review it.

25 Q Did she write any sort of memo, or provide underlying

Moretz - Cross/She

184

1 documentary evidence to you as to the substance of her
2 analysis?

3 A Yes, she -- we write memos on all the applications.

4 Q Did you provide those memos to the United States in this
5 matter?

6 MS. BARRY: Objection.

7 THE COURT: Overruled.

8 MS. SHEALY: I'll -- let me rephrase my question.

9 BY MS. SHEALY:

10 Q You would agree with me that information as -- that the
11 best evidence as to what was provided, or not provided to the
12 Pennsylvania Department of Banking in connection with Mr.
13 Levin's application would be in those materials, is that
14 correct?

15 MS. BARRY: Objection.

16 THE COURT: Basis counsel?

17 MS. BARRY: Argumentative, Your Honor.

18 THE COURT: I don't consider it argumentative, but
19 you can rephrase for a more specific question, please.

20 BY MS. SHEALY:

21 Q You indicated that you reviewed Ms. Metcalfe's analysis,
22 is that correct?

23 A I do -- I did.

24 Q Isn't it true that those documents have since been
25 destroyed?

Moretz - Cross/She

185

1 A Not -- I don't know what's been destroyed.

2 Q You were interviewed by the Government last October, is
3 that correct?

4 A 2015?

5 Q October of 2015.

6 A I don't know the date.

7 Q Do you remember being interviewed in October of last
8 year?

9 A Oh, yes. Yes.

10 Q And was that the first time that you were contacted by
11 the Government in connection with this matter?

12 A I don't know if it's the first time.

13 Q Were you contacted multiple times by the Government in
14 connection with this matter?

15 A It's been more than one -- two times.

16 Q Pardon me?

17 A I don't know the dates, but it's two times.

18 Q Two times.

19 MS. SHEALY: Your Honor, may we approach for a
20 minute?

21 THE COURT: Surely.

22 (Sidebar Conference)

23 MS. SHEALY: I believe we were only --

24 THE COURT: One second. Okay.

25 MS. SHEALY: We were only provided with one

Moretz - Cross/She

186

1 memorandum and interview for this witness.

2 THE COURT: Okay.

3 MS. SHEALY: Dated as of October 26th, 2015 and
4 (inaudible) memorandum and the documents of Pennsylvania
5 Department of Banking had been destroyed.

6 UNIDENTIFIED ATTORNEY: (Inaudible).

7 MR. IGNALL: The Government's practice is if
8 anything doesn't say new or different than a subsequent
9 interview we don't write anything up. So I don't think -- so
10 that may be why there's only one memorandum. But I think it's
11 inappropriate to ask this witness if the documents were
12 destroyed. They're trying to create an inference with the
13 jury that there was something exculpatory or helpful to the
14 defense, under the predicate laid that anything was destroyed
15 in bad faith might be appropriate to get before the jury.

16 THE COURT: It's already done. It's already done.

17 MR. IGNALL: I don't think -- he said he didn't
18 know.

19 THE COURT: Okay. But I'm just saying that the
20 question's already out there, and I've told the jury on
21 countless occasions, questions are not evidence.

22 MR. IGNALL: Yes, but I don't think it's appropriate
23 to follow up --

24 THE COURT: I agree. But just in terms of this
25 sidebar conference, do you accept the representation and the

Moretz - Cross/She

187

1 explanation that --

2 MS. SHEALY: That it was not done in bad faith?

3 THE COURT: That there was nothing else done and
4 stated -- nothing was stated differently so therefore, there
5 would be no need to have a second --

6 MS. SHEALY: You mean with respect to the interview?

7 THE COURT: Yes.

8 MS. SHEALY: That's fine.

9 MR. DUNCAN: And, Your Honor, can she ask
10 (inaudible) --

11 THE COURT: I'm sorry?

12 MR. DUNCAN: Can she ask this question, did he give
13 this (inaudible)?

14 THE COURT: She is still entitled to impeach if that
15 is appropriate to do. The question is right now --

16 MS. SHEALY: Your Honor, am I permitted to ask him
17 (inaudible) in this case and now clients are on trial because
18 they were unable to provide information to Government
19 regulators? We don't know what (inaudible) provided to the
20 Pennsylvania Department of Banking because those records were
21 destroyed.

22 THE COURT: You asked that question.

23 MS. SHEALY: Yes, Your Honor.

24 UNIDENTIFIED COUNSEL: (Inaudible).

25 THE COURT: Well at this point, based upon what I'm

Moretz - Cross/She

188

1 hearing at sidebar, there's no need to go into that at this
2 point in time.

3 (Sidebar Ended)

4 MS. SHEALY: The Court's indulgence, please?

5 THE COURT: Take your time.

6 (Pause)

7 MS. SHEALY: If we could bring up Government 82,
8 please?

9 BY MS. SHEALY:

10 Q Ms. Metcalfe was the person responsible for asking follow
11 up questions, is that correct?

12 A Yes.

13 Q And the materials that were provided to Ms. Metcalfe,
14 that's the materials that are represented in Government
15 Exhibit 82, is that correct?

16 A Eighty-two? Yeah -- oh, the follow up?

17 Q Yes.

18 A Yes.

19 Q And those materials and the information that is provided,
20 they relate to the 13 million that Mr. Levin had not yet
21 invested in Nova Financial Holdings, is that correct?

22 A I think it deals with the 13 million.

23 Q Okay. And this document refers to a CPP application.
24 Did you have any communications with anyone at the CPP Council
25 regarding Mr. Levin's application, Section 112 application?

Moretz - Redirect/Bar

189

1 A Not that I recall.

2 Q Did you have any communications with anyone at the
3 Treasury Investment Committee regarding Mr. Levin's Section
4 112 application?

5 A Not that I recall.

6 Q Did you speak with anyone at the bank -- I think you
7 testified you did speak with some people at the bank regarding
8 Mr. Levin's Section 112 application, is that correct?

9 A Yes.

10 Q Did you ever speak with my client, Mr. Barry Bekkedam,
11 regarding anything related to Mr. Levin's change in control
12 application?

13 A No.

14 Q Did you ever speak with Mr. Bekkedam regarding anything
15 at all?

16 A No.

17 Q Did you see his name on any of the documents that you
18 reviewed in connection with Mr. Levin's change in control
19 application?

20 A I don't remember seeing it.

21 Q Okay.

22 MS. SHEALY: No further questions, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. BARRY:

25 Q Mr. Metcalfe (sic), in this process for the Section 112

Moretz - Redirect/Bar

190

1 application, were you asking for the source of funding for the
2 entire \$18 million?

3 MR. EGAN: Objection, leading.

4 THE COURT: Just a moment please -- Metcalfe.

5 MS. BARRY: I'm sorry.

6 MR. EGAN: It's Moretz.

7 THE WITNESS: It's Moretz.

8 MS. BARRY: -- Mr. Moretz. Pardon me, sir, I
9 apologize.

10 THE WITNESS: It's okay.

11 BY MS. BARRY:

12 Q Mr. Moretz, in this process, were you asking for the
13 source of funds for all \$18 million, or not?

14 A I believe that we wanted to know the source of the funds
15 for the entire investment.

16 Q The entire amount?

17 A Right.

18 MS. BARRY: No more questions, Your Honor. Thank
19 you.

20 MR. EGAN: No further questions, Your Honor.

21 MS. SHEALY: No further questions.

22 THE COURT: Thank you, sir, you may step down.
23 Watch your step, please.

24 THE WITNESS: Thank you.

25 (Pause)

Colloquy

191

1 THE COURT: Are there other witnesses this
2 afternoon?

3 MR. IGNALL: Your Honor, I think we mentioned that
4 at sidebar earlier.

5 THE COURT: I just want to confirm.

6 MR. IGNALL: Yes. I'm confirming.

7 THE COURT: All right. We are going to adjourn for
8 the day. Again, you are reminded that you're not to discuss
9 the testimony amongst yourselves, nor with anyone else. Do
10 not do any investigation or research on your own. Avoid any
11 radio, television or other media broadcast about the case.

12 And also be reminded that on Monday we will start at
13 9:00 Monday morning, because we'll only have half a day Monday
14 in the morning, and we'll be --

15 UNIDENTIFIED COUNSEL: Your Honor, that's the week
16 after --

17 THE COURT: Oh, I apologize.

18 UNIDENTIFIED COUNSEL: -- that's the eighteenth.

19 THE COURT: Pardon me?

20 UNIDENTIFIED COUNSEL: That's the eighteenth, Your
21 Honor.

22 THE COURT: Oh, come anyway. No. Okay. My
23 apologies. I was trying to get you a day off. One second.
24 Ah, yes. Okay. Monday the 18th. I guess we'll be here all
25 day. 9:15. You all have a nice weekend as well. Thank you.

Colloquy

192

1 (Jury Exits)

2 THE COURT: We're adjourned. Sorry about that.

3 UNIDENTIFIED COUNSEL: Thank you, Your Honor.

4 THE COURT: Thank you.

5 UNIDENTIFIED COUNSEL: Have a good weekend.

6 THE COURT: You too, thank you.

7 (Proceedings concluded at 3:54 p.m.)

8 * * * * *

9

C E R T I F I C A T I O N

We, Josette Jones and Tara Martin, court approved transcriber, certify that the foregoing is a correct transcript from the official digital audio recording of the proceedings in the above-entitled matter.

Tara Martin

Digitally signed by Tara Martin
DN: cn=Tara Martin, o, ou,
email=dianadiana@comcast.net, c=US
Date: 2016.04.15 16:25:09 -04'00'

TARA MARTIN

Josette Jones

Digitally signed by Josette Jones
DN: cn=Josette Jones, o, ou,
email=dianadoman@comcast.net, c=US
Date: 2016.04.15 16:25:28 -04'00'

JOSETTE JONES

DATE

DIANA DOMAN TRANSCRIBING, LLC